

S. 2467, GATT IMPLEMENTING LEGISLATION

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HEARINGS

BEFORE THE

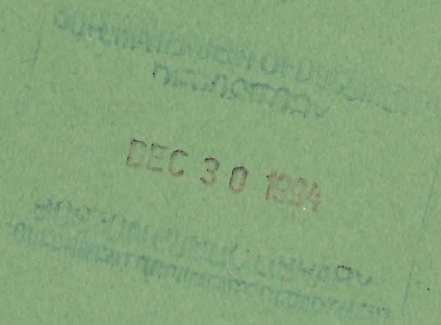
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

OCTOBER 4, 5, 13, 14, 17 AND 18, AND NOVEMBER 14 AND 15, 1994

Printed for the use of the Committee on Commerce, Science, and Transportation



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S. 2467, GATT IMPLEMENTING LEGISLATION

TUESDAY, OCTOBER 4, 1994

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Good morning. We start a series of hearings this morning on the GATT agreement. Momentarily, there is a rollcall, and I understand there is one back to back, and so I will make a few introductory remarks and thank our distinguished witness, James Fallows. James Fallows has got all kinds of ways he could be introduced in his book, and I wish everybody would read his book.

I think back at the time when I was a page in the State Senate of South Carolina right after the war. During the war there was a fellow named Gist, Senator Gist, from York, and somehow he had gotten a bill enacted to provide free textbooks for the schoolchildren of South Carolina, and old Gist had never had the advantage of a formal education but he was a wily politician. He knew he had some momentum, and to keep it going, by the time the war was over and we young law students were in there paging, he had a bill in to have the books printed down at the penitentiary. And he was going, waxing strong and heavy and everything, and finally Milo Smith, the senator from Bull Swamp asked Gist if he would yield. And Gist said, "Well, of course I would yield." He said, "Senator, what about the copyright?" And Gist said, "Oh, I am glad you asked that question." He said, "We will put those damn guards over them and make them copy them right." [Laughter.]

Well, I wish I had that same power to make them all read "Looking at the Sun" by James Fallows, the Washington Editor of the Atlantic Monthly. He has written other books and treatises and studies and lived in Japan, Malaysia, out in the Asian Pacific Rim, and was a speech writer, I think, for President Carter. I do not believe you wrote the recent speech President Carter made on Warren Christopher, but you did write some good ones. And I have really been thrilled, because by having you testify I have credibility now, and character.

I come about this whole issue from hard experience. Thirty-five years ago I was as a young Governor trying to build jobs and realized that for example we had no skills, and I instituted the finest, and it is admittedly so, the finest technical training system in the country, and we produced the skills and we brought the blue chip corporations of America to South Carolina, particularly from the Northeast. I purchased a plane from Mrs. Beech, a used plane. It took me 4½ hours to fly to New York. But we would fly up every week and solicit and carpetbag New York and Boston, and bring the industry south. And we got the blue chip corporations and we were making out like gangbusters.

Now I look, jumping up to the past 10 years, where the picture has changed which I call hard experience whereby the industries that are coming in are not the blue chip U.S. corporations but the foreign investment. We have now over 100 German industries in the little State of South Carolina; we have got 48 Japanese—Fuji is building another film plant just announced last week; and industries that we had have moved on to other countries. We never had, in my time down there as Governor, ever, did an industry leave South Carolina to go anywhere. But now we have Cummings Engines, for example, we got from Stuttgart in Germany to Charleston, which has gone to Mexico. That is a gear company. United Technologies and Electronics, 475 jobs from Bennettsville, SC, have now gone to Mexico. We have got Pratt & Reid that makes Baldwin pianos. They said, "Senator, you did everything you said you were going to do." We brought it to Liberty, SC, but now it is gone to Mexico. Last week, Baxter Medical in Kingstree announced they were going to Malaysia.

I picked these out in particular because you get the imprimatur of just being concerned about textiles. Textiles, textiles, textiles. I am proud of our textile industry, its associates, that we call them now, the workers. They are necessary and important jobs. But it is high technology, as well as the semiskilled jobs that we are losing. And I see that happening, and they keep on telling me do not worry, you are getting more jobs, you are getting more jobs. Well, I am losing them, and the fact of the matter is that I am like that fellow in the boxing match. Every time he got back over into his corner his second would pat him on the face, try to bring him back and say you are doing fine, he is not laying a glove on you. About the 10th round when he is almost totally out, he staggers back, falls on his little stool, and the second says, "Don't worry, don't worry, he hasn't put a glove on you, he hasn't put a glove on you." The fighter says, "Well, for God sakes, watch that referee because somebody is beating the hell out of me." [Laughter.]

I have got Jim Fallows here this morning to watch that referee, because something else is beating the hell out of us in this global competition, and I think it is the economy and the economic systems of our trading competitors, and I think particularly chapter IV here in this book outlines that, and I think what we should be doing in analyzing the best interests of the United States is to understand the competition that we are in the ring with, and why we are constantly told again and again and again, we are winning, we are leading, do not worry about it, this is going to create more jobs, create more world wealth, and everything else of that kind, when

we are losing, losing, losing. And the manufacturing sector now of the United States has gone in the past 10 years from 26.3 percent of our workforce down to 16.6 percent.

That having been said, Mr. Fallows, if you will, please indulge us. You all be at ease. I am going to get the last end of this vote and the first of the next vote, and then I think we will have all the Senators here. The committee will be at ease.

[A brief recess was taken.]

The CHAIRMAN. As I stated a little bit earlier, we had concluded the talk that I made 4 years ago to the Press Club. I do that sort of in justification of the charge about just being an obstructionist playing politics. That is unfortunate, because when we agreed in the Congress on the fast track we acceded a good bit of our responsibility to the executive branch on a positive agreement that we would have 45 days in these committees to consider the GATT agreement, and 15 days out on the floor. And now they come with instead of fast track, instant track and want this thing adopted this week. We just got it last week, and the truth of the matter is we have until July of next year. None of the industrialized countries have ratified GATT, and the rush, they say, and in my conversation with the President, is that they want to lead, later in November, at the Asia Pacific Economic Community, APEC.

How do you lead, Senator Dorgan? Here is the September 12 issue of Business Week, and fast-growing Asia, Japan, is leaving the United States in the dust. Do you think they are going to listen to the United States with its \$130 billion deficit in the balance of trade or to Japan with its \$130 billion plus balance of trade? I do not get their point. They keep on saying they are leading, they are leading. They are not listening to us. We are not in leadership position, and I think the distinguished witness this morning in his treatise "Looking at the Sun" and in his in-depth study economically of the systems, the trade and economic systems of our competitors, is very noteworthy and is going to get us off on the right foot. Let me yield to the Senator from North Dakota.

OPENING STATEMENT OF SENATOR DORGAN

Senator DORGAN. Mr. Chairman, thank you very much.

Mr. Fallows, thank you very much. I have followed your work for many, many years, and have read most of what you have written and have always enjoyed it. When I was younger, I read a book, written by I think a fellow named Harvey Kornbluth, of 180 pages or so that was titled, "The History of the World." I thought that was pretty presumptuous until I saw an article by you in the Atlantic Monthly that says "How the World Works," by James Fallows. I must say that I was fascinated by this, however. I read it and have read your books in which it is based and I think it sets the stage appropriately for the kind of discussion that we will have in this committee.

I will not give a lengthy treatise here, but I would like to say I am very concerned about the GATT agreement for a number of reasons. I think we are increasingly a country which measures its wealth by what we consume rather than what we produce. I do not think a country can in the long term do that and be a successful,

strong world-leading country, and I worry about this mantra chant of free trade.

I represent an agricultural State, and much of what we produce must find a foreign home. The last thing I want are closed markets. I do want expanded trade. I want expanded opportunity. But I most especially want trade rules to represent fair competition. And this mantra chant of fair trade, which is done by those without robes admittedly but done as incessantly as those you find on street corners with chants, is almost totally irrelevant to me. The question is, Can we construct a system of trade in which we have fair rules to be certain that we also while we trade protect the economic interest of our country?

It has become unfashionable to say that we want to protect the economic interest of our country, but we have fought for a long, long while to create what we have created, the system with worker protection and minimum wage, and the basic belief that we ought to pay a livable wage in this country for production. And we seem willing to trade that off immediately for this chant called free trade.

And let me make one final point, and I will make some lengthier points in the morning, but we have a situation, I think, where the large economic interests of the world, and I am talking about the private corporate interests, have convinced everyone that it is in everyone's interest to allow them to get in a plane and circle the globe and inspect where on this Earth can they produce for the cheapest possible production and then access established markets to sell it. Well, I studied economics and I taught economics and I know enough about economics to understand in the long run those pieces of that puzzle do not fit together. You cannot decide that you are going to produce on this globe where it is the cheapest possible condition to produce, and move the jobs there, or at least create the jobs there at the expense of industrial nations, to do that and then expect there to be a market for what you are producing back in the industrial nations when you later decide to access those market-places.

So, I think that largely the discussion of trade is a thoughtless debate in this town, and it has always been thoughtless and in a closed meeting. With the Democratic caucus a matter of days ago it took 10 seconds to make it a thoughtless debate, because immediately those who did not agree with my position or the Senator from the Carolinas position is, well, if you want to close your borders, if you want to build a wall around America, nobody is talking about that. That is not the issue, and that sort of response is thoughtless. That is not the issue. I do not want to close our borders. I want expanded trade. I want expanded opportunities. But I want to be sure that we are setting the stage for long-term production capability in this country, and that we set the stage for fair trade—fair trade. And so I hope we can, with the chairman's leadership here, have a thoughtful discussion rather than a thoughtless one about what kind of trade policy we can construct that represents this country's best interest, this country's best interest.

When Adam Smith wrote "Wealth of Nations" we did not have corporations. It was nation-to-nation discussions. Now it is American and international corporations with tentacles that circle the

globe who predictably want to do what is in their interest, produce where it is cheap and sell in established markets. That is fine if you have a system of fair trade in which production pays a living wage and so on, but this causes me great concern and I hope that we will have successful and interesting hearings that will contribute to the discussion in this town about trade policy in the future.

Mr. Chairman, thank you very much.

The CHAIRMAN. Senator, thank you very much. You could not build a wall if you wanted to. With technology being transferred on a computer chip, with capital being transferred by satellite the world around, it would be impossible to begin with and it would be sheer stupidity. And if in the next 25 years, the big growth market, customer market is going to be out in the Pacific Rim. So, if you want to get where the action is growing 10 times faster than anywhere else, that is it. We are good competitors, the Yankee traders here in the United States and we have got to get down on the field and cut out that chant of "free trade, free trade," and look at the game rules and begin to play by those rules in a competitive fashion. Nothing wrong with the worker. We have got the most productive industrial worker in the entire world. Nothing wrong with our leadership.

I have put, gentlemen, since you were not here, as an opening statement for our distinguished witness, "What Is an Economy For?" which is substantially for Mr. Fallows a full chapter here in the book "Looking at the Sun." Otherwise, I should add, when we finally determined that this was the route we were going to take last Friday we had little time. We called and contacted, of course now, Mr. Fallows; we contacted the Coalition for GATT, and we asked them—I thought they were going to get Jerry Junkins from the Coalition for GATT. He is the president. And we called again on Saturday, and they said yesterday they would have a witness for us but then decided to testify at a later date, and that is why we have the only one witness.

Now, even with this short notice tomorrow we are able to get our trade Ambassador, the distinguished Mickey Kantor, and we also have the distinguished Sir James Goldsmith. They will be the two witnesses tomorrow. Let me yield to Senator Burns.

OPENING STATEMENT OF SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman. I want to thank you for doing exactly what this body is all about, the U.S. Senate. It is to slow things down and take a look at it and then make some kind of an intelligent decision on the direction we should go with trade.

Probably nobody in this body is a bigger free trader than I am. But when you look at this agreement, I would have to take exception to the work that they have done, our negotiators, because I think in several areas they have blinked. I am sorry I have not done as much reading as Senator Dorgan, my friend from North Dakota has done because, well, winters are much longer in North Dakota than they are in Montana so they have more time for that. [Laughter.]

We spend more time doing. [Laughter.]

I thought I would throw that in there this morning.

Senator DORGAN. Well, we can read in North Dakota. [Laughter.]

Senator BURNS. Let us just go through and walk through some areas that I have really serious concerns. My first one is the World Trade Organization. We have already experienced living as a border State on what organizations can do, especially faceless, autonomous organizations that are unelected and most times unaccountable to all the trading partners. When you build an organization that has one country, one vote, and that is not weighted to the folks that have probably more to do with trade in the country than anybody else, I would say that that is suspect, at best.

Financing this: There has to be a way, but right now we are only presented with some smoke and mirrors of paying for the revenues that we will lose as a result of this agreement. I am very, very suspicious when I look at this and I look at the biggest part of our trade is agricultural products that the majority of the financing may come from the Agriculture Department that I think is operating on bare budgeting right now. We just do not have enough funds in Agriculture, and I would remind everybody, even though this is the Commerce Committee, that the primary objective of any society is the ability to feed and clothe itself and do business in the world. That is our first responsibility, because the second thing we do every day when we get up is eat. I do not know what the first thing you do is, but I can tell you the second thing.

When I look and a red flag goes up to anything in legislation is when we are presented with a copy of the implementing legislation. This is it right here. To implement an agreement or a treaty and it takes this much legislation to get it in force gives cause for real, real concern.

As you go through here there are some awfully nice goodies for some awfully special folks. Now, that is not free trade, and if there is anything that concerns me about what is creeping into America it is those folks who start with humble beginnings and finding it more difficult to make their mark or to chew out a piece of the American dream. Because we are defining those people that will succeed as those that are deserving and then those who are not. And I have a hard time of accepting that kind of a philosophy or an elitist philosophy into the American way.

So, there are concerns, and I want to again thank my chairman. I think he has done the right thing that he has slowed this down, and let the American people take a look at this agreement and see if they like it. And if they do, that will be reflected in the halls of Congress. If they do not, that, too, will be reflected here in the halls of Congress. And I thank the chairman, and I yield.

The CHAIRMAN. I thank you. Senator Lott.

OPENING STATEMENT OF SENATOR LOTT

Senator LOTT. Mr. Chairman, thank you for having this hearing, and others that are going to follow. I am glad we are going to hear from the Trade Representative Kantor, I believe you say tomorrow?

The CHAIRMAN. Tomorrow.

Senator LOTT. Very good. I know you have come under a lot of criticism, but I think this is just the typical type of situation that has caused a lot of the cynicism the American people have about the way we do business. We are already considering GATT under

expedited procedures, but even under those expedited procedures, there were 45 days allowed for us to try to find out exactly what is in this agreement. And I would be willing to wager that most Senators still have a lot of questions and still have a lot of areas in this agreement where they do not have the answers yet about what was in the final proposal that was sent to the Congress just last Tuesday, I believe. So, it has only been up here at the most a week.

So, I think it is the responsible thing to do to have these hearings and ask questions on both sides of the issue. I have some legitimate questions, and I look forward to hearing Mr. Fallows' comments this morning.

Thank you, Mr. Chairman.

The CHAIRMAN. Good. I had next Senator Breaux, but let me yield, then, to Senator Packwood.

OPENING STATEMENT OF SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, I have often said I have never met a trade agreement I did not like. And this one is no exception, although I do not quite like it as well as NAFTA, which I thought was a win-win for everybody without any question. This is more a 65-35 agreement rather than a 95-5 from our standpoint. I still think we are better off after it than before, and I will support it, not with wholehearted enthusiasm because I think we have done some things with pioneer licenses and retailers and country of origin that border on scandalous. But on balance, I think the agreement is better than what we have, and we should adopt it as soon as we can.

The CHAIRMAN. Very good. Senator Danforth.

OPENING STATEMENT OF SENATOR DANFORTH

Senator DANFORTH. Well, Mr. Chairman, I would just say to Senator Packwood, whether or not you are enthusiastic, just say yes. [Laughter.]

Mr. Chairman, I think this is a very good agreement for our country. There is no doubt in my mind that if America is going to have a future, we will have to trade. And if we are going to be in the business of international trade, it is better to have a set of rules that is enforceable than a set of rules which is unenforceable. I think for those of us, especially from the Middle West, who lived through the various soybean cases, oilseed cases, we recognize the flaws in the existing system, that the aggrieved can press their cases and go through the whole GATT process and end up with nothing to show for it. And that brings discredit to the whole system and the system begins to break down.

So, I think that one of the positive things about this agreement is that it does improve enforcement. And that, of course, is the point of reaching agreements in the first place, to enforce them. So, I will vote for it. I will vote for it with a real degree of enthusiasm, confident that it is in the best interests of our country.

The CHAIRMAN. Senator McCain.

OPENING STATEMENT OF SENATOR McCAIN

Senator MCCAIN. Thank you, Mr. Chairman, and I want to thank you for having Mr. Fallows here. I have had engagements with Mr. Fallows in the past, and I appreciate his intellect and his input into the process.

I will be very brief, Mr. Chairman. I believe in free trade. I also am of the persuasion that this agreement is a good one. It may have some flaws associated with it, but I have seen the results of the passage of the North American Free Trade Agreement where trade between our two countries has increased between 25 and 35 percent; there has been no giant sucking sound of jobs leaving the United States, in fact the opposite has happened; there has been a significant increase in jobs and employment; the principle of free trade must be preserved.

Now, Mr. Chairman, I appreciate the fact that you are going to have these hearings and a set of hearings because we need to understand exactly what this agreement is about. We need to explore the WTO aspect of it, which has certainly provided a lot of grist for the talk show mill, and we also need to find out what there is to this rumor about some bailout for the Washington Post or Cox Newspapers or anybody else.

But the fundamental principle of free trade after this treaty was negotiated for 7 years, in my view, is something which is overriding and overwhelming, and the consequences of a failure to ratify, I think, are profound, just as the consequences of a failure to ratify the North American Free Trade Agreement were profound.

So, Mr. Chairman, I want to thank you for having the hearings. I think there are areas that need to be explored and clarified. There is a lot of misinformation out there with the American people, and I hope that we can clear those up and at the same time not abandon what could lead to virtual chaos in the world trading scene if we do not approve this agreement.

I thank you, Mr. Chairman.

The CHAIRMAN. I thank you.

Mr. Fallows.

STATEMENT OF JAMES FALLOWS, WASHINGTON EDITOR, ATLANTIC MONTHLY

Mr. FALLOWS. Thank you very much, Mr. Chairman and members of the committee. It is a tremendous honor for me that you would invite me here. As many of you know, I spend most of my life interviewing the likes of you or traveling around the country and the world interviewing people and writing my views, so I appreciate this chance to express them briefly in this forum.

Mr. Chairman, you mentioned in your opening comments that your views have been shaped by hard experience. In a similar way, my own have, too. I should explain some of the background I bring to this. I spent most of the last 8 years of my life either living in East Asia or traveling there on reporting trips and trying to compare the hard experience on the scene of the fastest growing economies in the world with the principles that we understand about economic life. I have come to some conclusions that were different from what I had learned in economics courses in the United States.

You also mentioned in your opening comments, Mr. Chairman, that you were dismayed by the American tendency to say, "everything is OK, we are back now." I think there are two tendencies that we should fight against in the United States. One is the "don't worry, be happy," tendency, and the other is the "sky is falling" tendency. The United States does have tremendous long-term strengths recognized around the world. At the same time there are tremendous long-term difficulties that we should also recognize. I know that your committee has explored those issues, but both are worth bearing in mind.

Let me first say something very briefly about GATT itself, and then about a larger issue that I believe is in the background of your decisions about GATT and about future trade agreements over the years. As you know, Mr. Chairman, I do not present myself as being any kind of technical expert on this GATT agreement, as we discussed when I was arranging to come here today. The point I would make, however, is that this agreement is in my view a close call for the United States. It seems to me there are some advantages in its terms in access to agricultural markets and intellectual property changes and some regularization of subsidy rules, et cetera.

There are also some disadvantages for the United States, which many members of the committee have mentioned. The structure of the World Trade Organization looks as if it is going to cause some difficulties. Also, beyond question, this agreement would limit America's unilateral ability to change trade rules and to impose sanctions on its trading partners. From the perspective of the world trading system, that may be a plus. From the perspective of the United States, it may not be so obvious a plus.

The point I am making, however, is there is significance simply in saying it is a close call. For several decades in this country we have assumed that axiomatically these agreements must be good, that it was not worth looking at the details of them because in principle any kind of trade expansion must be beneficial for the country. If we analogize to other parts of our international experience—for example, arms control deals—we are suspicious about that assumption. There are some people who have said that any arms control deal must by definition be good. And I think the course of wisdom was to look at the details of arms control arrangements. I think the same is true of trade arrangements. The details do matter, and it is time to question the axiomatic benefit of this kind of agreement.

Why do I say that it is time to reexamine the axiomatic benefits? This is the main point that I try to develop in my book and in the article you are distributing. It seems to me that since the end of World War II—since the era of GATT, an era extending until now, most intellectual leaders in the United States—most political leaders in the United States have shared a faith that is built into the GATT structure. Although that faith is not always spelled out, it has three basic elements that have underlain the GATT structure. One is that world trade can be put onto a common set of rules among nations. That is, in the long run the ideal for world trade is something like the ideal for domestic trade in the United States and for legal arrangements in the United States. There will be one

set of rules that all countries around the world will agree to and abide by, and that is the ideal.

A second basic assumption of the GATT process is that the underlying structures of economies around the world are basically similar, or, to the extent they are dissimilar, they will converge more and more with the passage of time. As time goes on there is a kind of an ideal structure toward which all economies will evolve. This structure will involve fewer subsidies, fewer nationalistic biases, fewer of the things that we view as being retrograde, from the GATT point of view.

And a third, related assumption of the GATT process is that finally nations around the world have similar economic goals. What they all will want is more or less what we want; that is, increasing prosperity for our people, greater efficiency of production, freer trade, et cetera, et cetera.

If our discussion were limited to Americans or people trained in English language economics schools, I think we all would immediately agree on those premises. That is how we think the world should work. What I have come to believe, and I try to argue in this book, is that there is an alternative set of beliefs in the world about how economies operate, and the difficulty for us is trying to match the structure of GATT, the structure of our trade laws, to the way much of the world, including the fastest growing parts of the world, actually believe and the way they actually behave. Let me tick off four ways in which I think there may be differences in belief, differences in fundamental outlook between this Asian economic model or a world economic model and the American assumptions, and then I will try to suggest how GATT might be married to them.

The first difference has to do with the basic purpose of economic life. If we discussed it on this panel, I think we would all agree what the purpose was, and the purpose is essentially increasing consumer welfare. That is finally what life is for in an economic sense, and it is why competition and trade are good, because they bring more to our people.

It seems to me that in much of the world the effect of economic purpose is different. The purpose has been one of national and political and strategic strength with consumer economic welfare clearly taking second place.

It is very hard for me to account for the economic policies for much of East Asia over the last generation without this assumption. Another way of putting this is to emphasize the distinction between consumer welfare—consumer sovereignty which we say we elevate—and producer welfare, which is often the main goal of the alternative economic model.

A second major difference has to do with the assumptions about the role of political power and its relationship to economic life. Even though you all exercise in different ways great political power, your assumptions—our assumptions as Americans—are that political power in the long run should wane away as a force in economic life; that we should be suspicious of it; that economics should be unleashed to follow its own goal.

It seems to me that outside the United States there is often an assumption that political power will be there in the long run, and

it is not going to wane away, it is not going to be broken up. And the question is how it can most effectively be married to economic productive strength.

And you see this again in the policies in continental Europe, you see it in East Asia, of how the government can most effectively help work with economic forces for the strength of the nation.

A third basic difference, in my view, has to do with the depth of trust in the market. When people look at the fastest growing economies of the world, many of those in East Asia, they see tremendous market competition. Japanese corporations, Korean corporations, Malaysian corporations have been ferocious and effective competitors on the world scene.

However, I have come to believe that there is a clear limit to those societies' trust in the market. There are certain things they will not leave to a market decision. That is, the market is a crucial tool for making sure that Sony is efficient, that Toyota and Nissan remain productive and competitive, that Lucky-Goldstar and Hyundai compete well with each other.

But there are certain decisions that are not left to the market and are made in nonmarket ways. These include decisions about where jobs will be located, or about the role of international influence in their economies. And this, again, I think is a long-term difference of opinion.

A famous quote from Ronald Dore, a British Japanologist, sums up much of this difference. In describing Japanese economic policy he says that Japanese economists believe, as all good Confucians believe, that you "cannot get a good society nor even an efficient society" by leaving all decisions to the whims of the market. We need not agree with that, but I think we need to recognize the difference.

A fourth basic schism, it seems to me, has to do with the role of national borders in the long run as an economic issue. Almost all of us who were products of American economic education believe that national borders should steadily decline in importance. As time goes on products should flow across national borders, money should flow, corporations should flow, ideally people should flow, there should be a less and less nationality bound economic world.

I submit to you that many other people do not believe that, do not share that faith. There is a persistent and enduring difference in the minds of Japanese economic planners about Japanese enterprises versus non-Japanese enterprises. The same thing is true in Korea, the same thing in Singapore, the same thing to a lesser degree in Germany, the same thing in France. We may believe, as I do believe, that our vision is an ideal one, but that does not mean it is one that is shared through the rest of the world.

There are many, many more things to say about these differences which I will not say at the moment. I will mention the names of two scholars who I think have done the best, most pioneering, work showing how, in functional terms, this different system operates. They are Alice Amsden, who I believe now would be at MIT, and Robert Wade at Sussex University in England. Both of them have looked very, very carefully at the Asian economies and tried to extract the elements of their operating principles.

The point I am leading to here is to ask whether the kind of structure we set up in GATT is the right way in the long run to deal with this different economic model, which I am suggesting has great power and great appeal outside our own borders, and also is very much discussed outside the borders of the English language.

It is dramatic to see how different economic discussion is in English and in non-English languages. In English was act as if certain things are taken for granted, they are often challenged in Japanese or in Korean or in German language discussions.

Let me leave two final points, Mr. Chairman, and then I will be done with this introductory statement.

The assumptions that underlay the GATT structure are very much like those that underlay the United Nations after World War II. And for a long time the United States found there were certain issues which it was content to have the United Nations handle, and certain other issues that were so important that they would not be left to the United Nations. We felt as if the rules-based structure of the U.N. would not be an adequate way for expressing or defending certain of our security interests.

And it is only now, when the United States essentially enjoys a monopoly of political and military power in the world, that we can act as if we trust the U.N. to carry out many of these basic decisions. That was not the case 15 years ago, as many of your recall.

I think something is similar with structure of GATT. Immediately after World War II, when the United States was essentially a monopoly power in the world for economics, we could act as if a rules based system was the ideal way to handle many economic disputes. I think the economic world is becoming more complicated, as the political one was 15 or 20 years ago, and the question is whether this structure is still an adequate way for us to deal with these emerging powers and these emerging tensions.

My final point—you mentioned, Mr. Chairman, the clipping about Japan's great export successes in East Asia and whether the United States had leadership power there. I think the United States both does and does not have leadership power, in a way, that we should think about carefully.

It is clear the United States does still act as a political leader in East Asia, since it is seen as having a kind of freedom of political action that Japan or other countries do not have. It is seen as a great model in many ways, especially for higher education. Its mass culture is very attractive, its military force is still impressive in East Asia.

And yet I submit to you on the basis of my own hard experience that as an economic model, the rules propounded by the United States do not have leadership power in East Asia. Countries that may mouth an acceptance of free trade principles but not put them into effect have actually maximized their technological base and their other forms of national wealth, and that has great power in that part of the world.

So, I submit the problem is mixing the structures for resolving trade disputes with a more complicated economic world.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Fallows, of course now as you emphasize in the book, we have economic authority. Heretofore all the economic

authority that I have ever heard in service up here has been that of Adam Smith, David Ricardo, comparative advantage, open market, free trade.

Tell us about Frederick List, the German model, and how the other countries are more or less following that model. Specifically, do you find others following our model or following the Friedrich List model? And tell them about Friedrich List I can get educated along with everyone else.

Mr. FALLOWS. Thank you for asking. I think that people who are products of English language economic education are taught to think there is a kind of trinity of divine figures. One of them is from the realm of the sciences, where Isaac Newton and everything descended from is unimpeachable science. We cannot question its foundations because they do seem in fact unquestionable.

In the realm of politics, we are taught the Rousseau and Locke and Jefferson and those descended from that tradition are the holy figures who have set up ideals that we proceed from. And we are taught that Adam Smith, and David Ricardo, and economists descended from that tradition are of comparable unchallengeable stature.

It is fine for us to believe that. But, I submit is that this faith is not shared in the world outside the English language, and that as a sort of counterpart to Adam Smith many people in Japan and Korea raise the example of Friedrich List.

List was a young German in the early 19th century who traveled around a lot. He came to the United States at the time of the great canal building programs. And he set an example for people in my line of work by writing one book in 40 days of round-the-clock effort to try to win a prize. This book was the "Natural System of Political Economy." He set himself up to challenge many of the assumptions that Adam Smith had propounded about half a century before Friedrich List wrote.

What List basically theorized was that in the long run a society was only as strong as what it could make, as opposed to what it could buy. And the "tree of productivity"—the example he used—was the tree on which the fruit of future productivity and future wealth was borne.

And I think that this view of the long-term system of wealth is taken much, much more seriously outside the United States than it is here. Most American economists, most American economic graduates have never heard of Friedrich List. I tried for years to find his books in the United States after hearing about them in Japan, and only discovered one little book shop in Tokyo where I finally got a hold of his works. But he is, if not a household name, very well known in East Asia now.

I will give you one example of several hundred possibilities of how his work is put into effect. Over the last 25 years Japan has been very interested in developing an aircraft industry of its own. After World War II, the United States prohibited Japan from developing an aircraft industry. That prohibition has passed, and Japan would like to be able to make its own aircraft.

From a free trade point of view, from a consumer welfare point of view, Japan would simply buy airplanes made in the State of Missouri or the State of Washington or other States within our Na-

tion. But there has been a deliberate government policy in Japan to build what they actually call the "tree of productivity," using List's example and citing List. The policy reflects the belief that in the long run Japan's technological wealth, its competence in other industries will depend on its ability to produce in this field, not simply to buy airplanes for the best possible price. And so this alternative vision of the roots of economic life I think is very strong outside our borders.

The CHAIRMAN. Well, that is exactly the model of Friedrich List is exactly what Abraham Lincoln used in building the trans-continental railroad. The business community said, "Let us get the steel from England." He said, "Wait a minute, we are going to build our own steel plants so when we complete it we will not only have the railroad, we will have a steel capacity here in the United States."

I am putting the clock on me because this is good attendance, and we have 10 of us, and Mr. Fallows has to leave in about an hour.

Just one other question, since I have got a little bit more time, specifically on financial services. I would like to get right—for example, Ambassador Kantor went to this conference with the Japanese. He could not get financial services. But I suspect the reason he could not, as you cite on page 205 on the idea of economic success, is that the basic purpose of a financial system, they emphasize, was not to enrich speculators or even investors, but to be the servant of real economy.

And they look upon all this wheeling and dealing and junk bonds and making all of these big profits and everything else—that might make a lot of people rich, but it does not make a nation rich.

What is your comment there? Can you elaborate on that?

Mr. FALLOWS. I think the current controversy in the United States about derivatives illustrates exactly the point that you are making. Many American economists and other people are uncomfortable about the effect of this derivatives boom because it seems so separate from the real economy and so threatening to the real economy in certain ways.

And yet it is difficult for us to find any principled way to express opposition to it because it is, after all, free trade. It is free competition. It is a more perfectly competitive system and a more fully efficient market.

Many non-English language systems do not have that dilemma. They can say that the financial system is not intended to be "efficient in" its own sense, but to bring money to producers. Most Asian financial systems are woefully "inefficient" in our terms. They have high manpower ratios. They do not look as if they can compete on our terms. They are rigged in certain fashions.

But if their purpose is defined as getting money from the nation's people to the nation's industries, they are supremely efficient in that way. And I think there have been other times in U.S. history, as you cite in the 19th century, when the balance has been tipped in that direction for us.

The CHAIRMAN. Very good. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. Mr. Fallows, I am always interested in your comments.

Let me ask you to expand on this notion about a country's economic health and sources of future wealth on the notion that we largely look at indicators in America as some indication as how we are doing based on what we consume rather than what we produce. How do other countries react to those same evidences of economic health?

Mr. FALLOWS. This is complicated. There are many things set off in my mind by this question, and let me try to separate them.

One is people in Japan in particular are well aware that their consumption level is below America's, and often this is a source of great bitterness to them. Their houses are about one-third as large as American houses, on average. Few of our neighbors in Yokohama had cars, even though many of them worked for car companies. And so there is a suppressed level of consumption which people resent. And I think people in the long run would like to live better around the world.

However, I think there is a broadly shared sense, especially in East Asia and to a degree in Western Europe, that America's consumption has gone too far; that you see a nation that has celebrated private consumption at the expense of other things.

I will give you an illustration that many foreigners have mentioned to me. They say when they come to major American cities and they try to use a telephone they find the public phones are run down. The hand sets are ripped off, there are homeless people sleeping in the phone booths. But then they see other people cruising by in their limos with cellular phones. And so you have an elevation of private consumption and a sort of neglect of the public consumption in various forms.

While most people, most places, would like higher individual consumption levels there is a sense, No. 1, the United States may be overconsuming as you have pointed out, Senator, in your work. And No. 2, that in the long run a nation does need to save and defer consumption in order to have future wealth, future productivity, future sources of technology, and there is a sense that that trend is working against us in the United States.

Senator DORGAN. Now, some make the point that things have changed a great deal since the end of World War II, and you referred to American corporations as do others—our companies versus their companies.

But is it not true that increasingly companies are international? I mean, you take a look at our car companies—substantial international investment, substantial coproduction arrangements, and so on. And some make the point, as I alluded to in my opening statement, that what you have here is a proposition by those who are the international producers. They want to establish trade relationships in which they are able to produce where it is the cheapest possible area to produce, and then they want to be able to access and establish marketplace.

On the other hand, some feel very strongly that there ought to be price for accessing established marketplaces, and part of that price would be as you produce you also invest in those marketplaces.

How do you see the change with respect to corporate involvement here? Are we not talking about increasingly large international economic conglomerates?

Mr. FALLOWS. If I could rephrase that slightly, I would say that increasingly U.S.-based corporations are internationalized, and that corporations around the world are behaving more and more this way, but that U.S. corporations are behaving more this way than anybody else. And this creates a kind of asymmetry for those of us who are U.S. citizens. Corporations based here are somewhat more aggressive in searching the world for production sites. But the trend, you are right, is spreading.

Senator DORGAN. How does that influence the trade debate in this country, then?

Mr. FALLOWS. Well, this brings us to the second thing you are asking, about whether there should be a price for this kind of access.

I think that many nations have shown that while the trend of corporate internationalization is an unstoppable one, and in many ways a potentially healthy one for equalizing world wealth, it is not something that automatically turns out to your benefit. There are ways that you can change the rules to affect the result.

For example, among Japanese-based corporations, the part of the world where non-Japanese citizens have the most powerful role in their subsidiaries is not the United States, it is not Western Europe, it is not Southeast Asia. It is Africa. And the reason is most African governments have put on draconian requirements for personnel promotion which the foreign corporations have obeyed.

Similarly in Western Europe, they have often applied local content and local production roles which many international corporations have complied with. And so I think the lesson is that this is a force that is going to be increasing but it can be tailored by each nation to its benefit by changing the rules of engagement.

Senator DORGAN. Lester Thurow testified before this committee some while ago on another subject, and he was talking about these kinds of trade agreements in the generic, saying that they would likely result in a decrease in income to unskilled workers in America largely because you are saying to unskilled workers in America you will now increasingly compete without restriction with several billion unskilled workers everywhere.

And I asked him, "What do you mean by unskilled? What is the definition of 'unskilled'? If unskilled workers in America will suffer a lower income moving in this direction, what do you define as 'unskilled workers'?"

It happens to be two-thirds of the American workforce, a very significant conclusion. And some believe, and I know that Senator Metzenbaum had a hearing last week I think about child labor laws in other countries, and others have done work about the wages paid and the living conditions in other countries—some believe that proper expansion of trade could be gleaned through trade agreements in which industrialized countries have a certain trade agreement with each other, and then the industrialized countries work together on bringing up the standard of living and enhancing competition with Third World countries in a slightly different way, because simply having competition between us, a country that has

gone through a lot of change in order to get living wages, and another country that might pay its workers 14 or 24 or 50 cents an hour is not a competition that we can win with respect to unskilled production. But nor is it a competition that is fair.

I would like your observations on that.

Mr. FALLOWS. I think you have touched on the most difficult issue in the long run for America's trade engagement with the world as a whole. I agree with your premise and that of Professor Thurow that other conditions being equal, a steady expansion in free trade will mean that every single country has within its borders the whole distribution of income of the world.

You eventually have the Bangladesh range to the Switzerland or U.S. range within your borders because each level of your population is exposed to the world price for its level of labor.

If you assume that this is undesirable from a social point of view to have such a range within your borders, what do you do about it? And I think there are two basic strategies which we need to think about in the long term.

One is what you could summarize as the Japan or Singapore strategy, which is trying very rapidly to move all your people up the skill and education level so they can all compete at the high end. That is much easier for Japan for Singapore than it is for us. They are more homogeneous societies, more centrally run, et cetera.

The other strategy is to control or limit your terms of engagement with the outside world; to say, as you were suggesting, we first interact openly only with other industrialized countries while trying to raise the others.

I am not sure exactly how we apply those, but I think that is the choice we face and the problem is exactly the one you lay out.

Senator DORGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Burns.

Senator BURNS. Mr. Fallows, I have just a couple of questions. I wonder, you know, as we go into this agreement especially with the WTO, and this is just an observation and correct me if I am wrong, other countries fear the United States a little bit because of our power in the marketplace and our position in the world; that they do not want to be taken over by this economy, by either our system or whatever else this country has to offer.

It seems to me that if that was the case, and following World War II, as you made the observation that we were the only world power at that time with capabilities of doing anything either physically or philosophically, why did we not do it? Why did we not just go on and exert our influence around the world? That would be my No. 1 question.

So, why the fear of one country, one vote weighted in, as this agreement calls for?

And then I go through this discussion in academia on the different philosophies, how we approach world trade. As a person in the political process, I have got to go home, and I look my farmer in the face and he says, "OK, how does that affect me?" At some time or another we are going to have to take a look at this agreement and bring it down to a level that the people who do the pro-

ducing and the people who have investments—how does that affect them?

And then I would make the observation that it seems to me that in these agreements, and when we go multinational, that we spend our time trying to level the human condition. Instead of elevating those countries or those Third World countries and their standard of living to try to pull them up, we keep trying to pull ours down to the world median, so to speak.

I think that is the dilemma that most of us who have to make the decisions with regard to trade and policy have to make. So, I guess that is a statement more than it is a question.

How do we make that decision, because that decision is going to be made among 100 in the body? How does that affect, No. 1, my small manufacturer? And, No. 2, how does it affect the standard of living to my farmer who has a substantial investment in what he wants to do, because the secret to American agriculture has always been that we had the ability to own land and we all were our own marketers. The Government did not do the marketing for us, we played on the world market as individuals.

So, I would just like to have some comment with that, and your ideas along that line.

Mr. FALLOWS. These, again, are hard questions and hard choices, which is why you all have the job you do. In a way, I am glad not to have it because of the difficult votes you have to cast.

On why the United States did not use its monopoly power when it had it, if you asked the French they would probably say, "Oh, but it did." They feel as if their culture is in constant danger of being run over.

I think the world at large clearly recognizes that the United States has been a more benign exorter of power than any other nation that has had comparable power. While there are local grievances in many parts of the world, from North Korea to Cuba, in general the United States has used its power much more carefully than anybody else has.

And so I think it is less the fear of U.S. hegemony that has led to the "one-country-one-vote" rule. Rather it is a sort of United Nations mentality where each nation understandably feels that it wants to stand up for itself as best it can.

There is a subtle point here. There is an extreme sensitivity in the rest of the world, and I would say a hypocritical sensitivity, to any threat of "protectionism" in the United States. You can be in a country whose trade laws are 100 times more protectionist than the United States, and any speech on the floor of the U.S. Congress that says, "Well, we have to deal with this or that trade problem is front page news there. Oh, the U.S. is going protectionist."

And there is a kind of mentality that the United States has this huge, billy club threat of protection reflecting the size of the U.S. market and its relative openness now that does lie behind, I think, this mentality of every nation wanting to have its own vote.

I am against the "one-country-one-vote" arrangement simply on practical terms. As the U.N. General Assembly shows, this is not a way to make sort of reasonable decisions, to have this sort of one-nation-one-vote arrangement. So, it will be interesting to see how this evolves.

On your larger point of what this means in action terms to your constituents, I think it depends on a close reading of the agreements. I would guess it would be better for your farmers, but I have not studied it carefully enough to know for sure.

As to whether the U.S. strategy should be one to underbid its wages continually to compete with other nations, not only is this depressing in social terms—I mean emotionally depressing rather than economically depressing—it also seems not to be what other successful nations are doing.

We might look again at Japan's example. The cost of its labor in world terms has nearly tripled in the last 10 years, as the yen has more than doubled and as wage rates have gone up there. Their strategy has been not to find ways to cut labor costs but to find ways to become rapidly much more productive. And so I think that is a much more appealing strategy, if we can tailor policies toward that.

Senator BURNS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Packwood.

Senator PACKWOOD. Mr. Fallows, let me pursue the theory of making things versus buying things, or production versus consumption. And in Japan you cited their desire to have an aircraft industry, I would assume, for more than just indigenous purposes. They want to sell the airplanes around the world.

What is going to happen if all the countries that have any conceivable productive capacity adopt this philosophy, so that we will protect against—basically we will all become productive, not consumption, and we will all want to sell our things overseas. What happens then?

Mr. FALLOWS. To a large extent that is the story of the last 20 or 30 years. And the reason it has been sustainable until now is the United States has been kind of the final absorber of these products. The United States has, you know, its annual trade deficits of more than \$100 billion for the last few years.

Interestingly, at this moment the trade deficit with Japan is around \$50 billion, a little less. The U.S. trade deficit with the rest of Asia is also about \$50 billion, and Japan's trade surplus with the rest of Asia is also about \$50 billion. And so the United States has served as kind of a "heat sink" or a "product sink."

The model that you are proposing is essentially what has been in place with the United States being the absorber to our benefit as consumers, but the question is does it have—

Senator PACKWOOD. But what happens if we change that?

Mr. FALLOWS. Well, what would happen if we change that is that it will be less convenient for everybody else. It would not be a nightmare, but it could be a worldwide slow down.

But, again, it is worth bearing in mind that 25 years ago U.S. trade was balanced. And so it has been a phenomenon of the last two and one-half decades that the United States has had this huge vacuum cleaner pull.

Senator PACKWOOD. But if we do that, if we no longer are the trade sink, it finally means that the other countries—and I am not quarreling necessarily with you—will not be able to produce as much. They will not be able to sell it. So, what do they do then?

Mr. FALLOWS. Well, presumably they could open their own economies in more of an Adam Smith-like fashion and say, "we are happy to specialize among ourselves or happy to raise the consumer's standard of living."

As we all know, the size of the U.S. sort of final sink role is determined by macrofactors inside the United States.

Senator PACKWOOD. So, they all sort of start to move a bit more toward consumption and absorb their own production?

Mr. FALLOWS. That is what I hope and believe.

Senator PACKWOOD. Let me ask you a further question because these different industries are all—the airlines one thing, airplanes one thing.

Japan has by and large gotten out of the apparel export industry. Thirty years ago they were in the top 10 on apparel exports and textiles. Today they still are in textiles. Is this a conscious decision on their part? There is still a lot of handwork involved, and they do not want to compete with Hong Kong and Singapore and Bangladesh, and that was not an industry critical to the greatness of the nation, so let that one go?

Mr. FALLOWS. Basically yes, but with a caveat that I think is a little different from the way we would normally handle such a decision.

I think Japanese planners in MITI realized 20 years ago in the long run they could not compete with Hong Kong and China and Indonesia on these low-wage jobs. And so they thought this was something that would have to be evolved away from.

But it was a conscious evolution, toward a strategy of making more and more of the machinery for producing cloth, et cetera. It was not simply saying we are going to get rid of this and something else will turn up, but there was a deliberate transition strategy.

Senator PACKWOOD. Well, let us take energy, because here Japan is really in a bind. They do not have much indigenous energy. I am not sure no matter how much they spent they could be energy independent. They have no coal of any consequence, no oil, no great rivers to dam. I would assume their national psyche is such that if they tried to go like France, totally nuke, it would be difficult for them to do. So, they import it, but they have no choice.

We do have a choice. If we wanted to, we could be energy independent. We are a cornucopia of natural resources. South Africa has been making gasoline out of coal for decades. We could do the same thing. The natural gas in this country, let alone North America, counting Canada, is just unending. Oil shale is unending.

Should we, realizing this would probably cost us in the short run more money than importing oil, because we tried this with synfuels and turning coal into gasoline is not cheap, but is this the kind of thing that you would count as productive and we should be doing even though it is a significant cost?

Mr. FALLOWS. Senator, we are in realm that I know so little that I would sound ridiculous no matter what I said. So, with great respect to you I will decline to answer because I just do not know enough about the issues. I am sorry.

Senator PACKWOOD. I was just posing it as an industry like steel or like autos. Is energy an industry where in order to be a great power you must not be too dependent on imported sources?

Mr. FALLOWS. I think that it would be a matter of balancing the costs of going this alternative road versus the perceived vulnerabilities.

I think the vulnerability to the United States now of relying so heavily on so much oil from such a concentrated part of the world, that is a vulnerability, and we need to discuss ways to reduce that. I am not expert on the consequences, but I agree with you it is something worth taking as a national security point.

Senator PACKWOOD. Just to come back to production versus consumption again, if the United States decides it is no longer going to be the trade sink for the rest of the world, and that would force them toward having to sell more of their production in their own countries, and we would do the same thing, this is what many people would call protectionism, on balance you do not see that as all that bad a thing. It forces them toward consumption. It forces us a bit more toward production.

Mr. FALLOWS. If you and I both believe what we learned in economics courses, in the long run people should be better off and efficient industry should rise. It would be better, by our standards, for the Japanese and Koreans and Singaporeans to have a more open economy with better consumer benefits.

So, yes, it would be better in the long run, both for America and for the world as a whole if the United States did not have this huge, chronic deficit.

Senator PACKWOOD. Well, I thought you were coming down to really the Adam Smith side. If all of the countries would abide by that concept, that you would prefer that to what we have. But if they are not going to abide by that concept, we had better adapt to the real world is what I sense you are saying.

Mr. FALLOWS. Yes, that is what I was trying to say, and I think it is a matter of time scale. I am willing to believe that to the extent we can foresee anything a century from now, 50 years from now, it is possible there will be deep changes in these other economies.

Within the next 10 or 20 years, I have become deeply skeptical about real changes in the Japanese or Korean or other economies. And so I think we need to cope with the world as it is.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Danforth.

Senator DANFORTH. Mr. Fallows, thank you very much for your excellent presentation.

If the rest of the world is not going to become more like us, do you think we should become more like them?

Mr. FALLOWS. Internally, no. I think the things that are unique about the United States internally are its greatest glory—its absorbtiveness, its inclusiveness, its mobility, et cetera. And so I do not think the United States should become "like them," in those ways.

Externally, I think our "rules of engagement" may need to alter somewhat, and I would use once more the arms control analogy. In dealing with the Soviet Union, and we would never want to become a police state or a totalitarian state, but when dealing with them we had to recognize their nature. I think something similar is true in trade relations.

Senator DANFORTH. What do you think would be the test of a good trade agreement?

Mr. FALLOWS. A GATT-type agreement or a specific country agreement?

Senator DANFORTH. Either.

Mr. FALLOWS. I think it varies. I have come to think there is a case of one involving agreements with Japan, and then other cases for almost every other nation. The reason I justify this "case of one" is the scale of Japan's economy, the durability of its trade surpluses, et cetera. And so I basically support what I have believed to have been the Clinton administration's policy and the Reagan semiconductor policy in saying, here are targets for expansion of foreign sales in the Japanese market.

For the rest of the world, it seems to me there is a challenge different from the one with Japan. If there are agreements that seem in some enforceable and predictable way to expand market penetration by all international forces in domestic markets for farmed goods, for manufactured goods, to reduce subsidies, to protect intellectual property, then those things are good. The enforcement mechanism, however, becomes crucial. And that I think is the greatest weakness of this GATT agreement.

Senator DANFORTH. So, for multilateral agreements you think enforceability is the key test?

Mr. FALLOWS. Yes.

Senator DANFORTH. Do you have confidence that absent trade agreements the United States would, or has enforced the rules of trade effectively? I mean, in other words, for those who would say, "Well, let us retaliate against unfair trade practices," do you think that we have had a good record of doing that or do you think that we may have blustered from time to time but basically there is not much credibility there?

Mr. FALLOWS. I think we have blustered and usually used tools in an ineffective way. And what I mean here is because of our free trade education, we are embarrassed by the idea that we might intervene in trade or impose sanctions. And so when it is done it is usually for very parochial reasons. Somebody's mill, somebody's farm, somebody's this or that is in trouble, and so there is a particular protection. And so the overall result is to have the evils of protection without the good of protection.

I think the best example of using protection effectively was President Reagan's semiconductor deal 6 or 8 years ago, where there was clear purpose for it, it was not done in an embarrassed way but a deliberate way, and I think it achieved its goal.

Senator DANFORTH. Would you agree that it would be very hard to find instances in which the United States has tried to enforce the rules of trade on a unilateral basis?

Mr. FALLOWS. Do you mean, for example, by imposing 301?

Senator DANFORTH. Yes. I mean that in the end we flinch.

Mr. FALLOWS. I would generally agree with that, and I think the reason is both there is predisposition intellectually and politically to think this is something that we do not want to do. It is a kind of a reprehensible thing to do. There are lobbying pressures you are aware of on both sides of these issues.

So, generally there is a sense that we do not want to do this and back away. And, again, I mentioned the semiconductor agreement again because it does stand as one particular successful example.

Senator DANFORTH. I am all for trying to enforce whatever rules there are whatever way we can, and I like 301. I like anything we can do to try to enforce the rules, but my own view is, when it comes right down to it, enforcement through a multilateral system offers much more promise to us than does the hope that somehow, sometime, we are going to be enforcing what we think is fair in a unilateral way.

Mr. FALLOWS. That may be. I would fall back on the illustration of the United Nations once again. Really, the only time when the United States has trusted the U.N. to carry out important decisions is when the United States thought it could monopolize power in the U.N. The purpose of establishing this WTO is precisely to make it somewhat immune from U.S. control. You can understand the goal of doing so if you were the Malaysian foreign minister or the French foreign minister. It is not clear whether this is in the U.S. interest.

Senator DANFORTH. Yes, except in the oilseeds case clearly the status quo is not working. I mean, that is the reason for it, I think, that you now have a system that can be blocked by anybody who wants to block it.

Mr. FALLOWS. I understand, and I would not make the case for the current system. I would say that the significant change in the new system is the apparent limitation on U.S. unilateral action. In principle it will be harder for the United States to take unilateral steps. That is something that we should think about carefully.

Senator DANFORTH. Do you—in the 15 seconds or so I have left, do you think that trade talks with Japan on a bilateral basis such as the ones we just partially concluded do much good?

Senator Bentsen used to say the basic strategy of Japan was talk, talk, ship, ship, ship. Do you think that—I mean, when the press releases are put out at the end of a long, lengthy set of bilateral negotiations with Japan they are always very enthusiastic. Do you share that enthusiasm?

Mr. FALLOWS. In a word, “no,” but in more words than that, I think this raises the eternal “compared to what” question. Compared to doing nothing at all these talks have been better than nothing. I mean, not just this year, but the last 20 years.

Compared to having some either more effective or more multilateral talks—for example, getting the Europeans, who share every one of our concerns, involved in these negotiations—it is not as good as that would be, if it were possible. So, those are the two extremes. It has had some effect, but others would be more desirable.

The recently concluded talks I view as having been beneficial in one narrow way. The narrow way is essentially getting the Japanese Government to agree to measurable indicators of how their market opens up, something they have resisted agreeing to. The great failure, of course, is the auto parts industry and the auto industry and not being able to make any agreement there.

Senator DANFORTH. Thank you.

The CHAIRMAN. Senator Inouye.

Senator INOUE. Thank you very much. I am sorry I was not here to listen to the statement of Mr. Fallows, but listening to your exchange with my colleagues, I find this extremely provocative and interesting.

Is it your contention that, notwithstanding the reassuring and promising rhetoric of the treaty, as long as there are fundamental differences in economic philosophy and culture, we are asking for trouble?

Mr. FALLOWS. Yes. We are asking for disappointment and heart-break in imagining that a structure of rules imposed on dissimilar systems will produce the result we are expecting, so that is what I am saying.

Senator INOUE. And I believe you are also suggesting that Americans have very little, if any at all, understanding of the Eastern philosophy, Japan in particular.

Mr. FALLOWS. There certainly are regional variations in the sensitivity, but yes, as a rule I agree with that.

Senator INOUE. For example, the philosophy of, I suppose one can call Confucius, where the master or the company is much more important than the individual members, or the State is much more important than the individual members.

Is it not true that the automobile industry in Japan has never had a strike in the nature of those that we seem to experience every year with General Motors, Chrysler, Ford, and what-have-you?

Mr. FALLOWS. It is certainly true that in the last 40 years they have not had such strikes. Immediately after the war, in the occupation years, there was a potentially powerful labor union movement in Japan which was broken basically by the Japanese Government with U.S. support. In all of relevant postwar economic history they have had none of these disruptive strikes.

Senator INOUE. That the company is much more important than the workers.

Mr. FALLOWS. Yes, and I think you would find public opinion polls within the Toyota workforce, for example, agreeing to that.

Senator INOUE. Is it not also true that as a result they look inward? For example, our Founding Fathers, when they devised this Government, felt that we should have a small Government and people playing a much more active role, and as such as we invented philanthropy.

The Japanese are still trying to figure out what philanthropy is all about; is that not correct?

Mr. FALLOWS. That is correct; yes.

Senator INOUE. They take care of themselves.

Mr. FALLOWS. Yes, and I think there is the mentality—their historic consciousness is of a relatively small nation always in peril of being pushed around by somebody, whether it was the Chinese or the English.

I think the crucial moment in the consciousness of today's Japan, I would argue, was in the 1840's, when Britain essentially tore apart China in the opium wars. If even mighty China could be conquered by a foreign power, I think that it would have a long-term effect on Japan's sense of its vulnerability.

Senator INOUE. If that is your belief, what do you think we should do?

Mr. FALLOWS. To limit this answer to the trade front, is a basic change of mind in U.S. trade negotiations toward Japan should come about. I think that the American trade strategy over the last 30 years could be pretty fairly characterized as "missionary work."

We believed that we had the "right" approach and we would eventually convert people to believe what we believe—that there should not be protection, there should be consumer welfare, there should not be Government intervention. Through enough persistence, enough ringing on doorbells, we would bring them to this faith.

This approach has proven not to work, in my view, and also it is an extremely aggravating approach from the Japanese point of view. They feel as if they are endlessly being moralized at by a nation that they think has some moral problems of its own.

So, I think the basic change in mentality should be one of saying, we are nations which share many strategic interests, which share innumerable human bonds, innumerable cultural interest, but we need to find a way to contain the level of these economic frictions. Therefore, we should agree on ways that our economics will interact with each other. If Japanese industries invest here, as we would like them to do, they should more thoroughly localize when they come to the United States. We should agree to opening in high-value Japanese markets where our companies succeed every place on earth.

So, I think we should negotiate on the specific facts of our interaction, and not the philosophy of how Japan runs.

Senator INOUE. Is it your contention that if we approve the GATT we would be disappointed and frustrated again?

Mr. FALLOWS. It is an extremely difficult "compared to what question" once more. The reality is this agreement has been struck after many, many years of compromise. One can imagine great disappointment, great tumult in the rest of the world if the United States does not approve it now.

There are some disappointing parts of its structure, and so I think that if it were approved with some kind of hosanna-like expectation for how this would bring about an end of all trade problems, then we would be in for disappointment. If it were approved on a sort of close-call, more-benefit-than-harm rationale, then it would be less damaging.

Senator INOUE. That is our decision. Thank you, sir.

Mr. FALLOWS. Thank you.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Thank you very much.

I take it that you are sort of hinting at a revolutionary idea, here. Maybe it is not revolutionary, that generally speaking everybody nowadays is saying that free trade and free enterprise is the way to go, at least if you talk to any economists nowadays, although that has changed. I think that is a true statement, though.

Most of the old socialist economists of the sixties, when I was in college, have sort of changed. At least they embrace verbally free trade and free enterprise as goals, and I know that you have lived in Malaysia. I made a trip out there, and it seems that in South-

east Asia everybody will voice to you free trade and free enterprise are our goals, and I believe that has been my guiding principles in the Senate.

Of course, there are a lot of variations on those two things. We find here in this committee that seated at that table where you are we have had several people come who make a couple of million dollars a year, and they are all for free enterprise except when it comes to regulating their competitors, but there is always a caveat in their testimony, that critical paragraph that they have to use the lines of their opponents, or their customers and their competitors.

But anyway, it seems that now, I take it that you and maybe Mr. Goldsmith tomorrow are coming forward to say that free trade is not such a great deal for the United States, that maybe we should try to have regional free trade, as I understand it, is what Mr. Goldsmith I guess is going to say.

I cannot hold you accountable for what he is saying, but there seems to be almost a counterargument to the—what is universally embraced upon here as free trade and free enterprise. Now we are getting from you, maybe, and from Goldsmith, this idea that we should have regional free trade and we should act more in the national interest.

Is there a new economic theory? Are you suggesting an alternative to free trade and free enterprise?

Mr. FALLOWS. This is an important question which I appreciate your asking, Senator. I think one way to describe what I am saying is there is a difference between something being generally good and it being always good in every possible application within one nation's economy.

What I am arguing is that something short of complete free trade, something short of complete laissez faire has proven to be very effective. I mentioned earlier the scholars Alice Amsden and Robert Wade, both of whom have shown how using competition and free trade as a tool with some government guidance has been very effective for Japan and Korea and Taiwan and Singapore. This is opposed to the belief that laissez faire in all ways will automatically make you richer.

When it comes to relations between nations, or among nations, I am suggesting, and other people have, that there are complications that arise, and important ones.

You say, "OK, the only thing that matters to us is the freest possible trade." For example, NAFTA has on balance been a real benefit to the United States, I would contend. But in Mexico there are extreme political tensions right now, as I am sure you know, with farmers, who are finding it impossible to compete with some of your farmers and others in the United States.

I think we will find around the world, including from the less-developed countries, the sort of political unrest from their own farmers who cannot compete with ours, or with the Argentinians, or with the Australians.

That is one illustration of a tension in the long run between complete free trade and what it takes to make a society cohere. Societies are not just for profit maximization, they are not just consumer maximization. People have to live together, and so there

is some compromise that has to be negotiated between those interests.

Senator PRESSLER. Now, National Geographic has an article this week about the old Hanseatic League, and they repeat this cliché that when they started having free trade among themselves and competition they all flourished, and for four centuries they had free trade among the Hanseatic League, and maybe at that time, I guess, that was the world, or the major powers in the world. Why would that not be true today?

Mr. FALLOWS. I am not expert enough on the Hanseatic League to be able to draw analogies from them, but let me use an even homelier analogy, and then I will come back to your question.

We have all seen the recent medical study showing that a moderate amount of drinking is good for you. But no one says "Well, it is therefore good to drink a case of beer twice a day." Something similar I think can be said of free trade. It has been shown as a very effective vehicle for mutual prosperity, but not an absolute answer to everything that is troubling the world.

Senator PRESSLER. Now, in your article, you say that France and Germany are more Asian in trade policies. What do you mean here—and I might say that I was recently down visiting Airbus in Toulouse, and of course, Airbus has its subsidy and other practices that Boeing does not like, but in addition, just as a little game, we were walking on the streets of Toulouse and we were looking for Japanese cars. We did not see a single Japanese car in over an hour-and-a-half. Maybe we were missing something in France. But how do they keep the Japanese cars out?

Mr. FALLOWS. On that specific question, as I suspect you know, the European Union has a very low, very draconian outright limit on Japanese car imports. Interestingly, the tone of trade relations between Europe and Japan is very pleasant.

The Europeans are much more protectionist than the United States is, but there is none of this daily rancor that we get between the United States and Japan. The Europeans have said, "OK, this is the deal," and the Japanese manufacturers live within the deal that is offered.

That is what I meant by saying that France and Germany were "more Asian." I often think when I go to France that it is Japan with good meals, or Japan with leisurely meals—I like the meals in Japan, too. There are many structural similarities—very powerful central government, a kind of enforced national homogeneity, and an unembarrassed national protectionist policy, national champion of industries, thinking of itself from being separate from the world.

France is more aggressive in its language policy than the Japanese are, but I think that throughout continental Europe there is a sense that there are such things as national economic interest the government can help create.

Senator PRESSLER. Now, is there a way to change the GATT to make it more effective in dealing with Japan and Asia?

Mr. FALLOWS. That is a hard question which I do not really know the answer to. My suspicion is that what we have had in the world economy for the last 20 years is really two "categories of one." One is the category of one consisting of the United States as a huge

purchaser of the world's goods in a relatively open economy. The other is a category of one consists of Japan, with surpluses of its scale, and all of the other "outlier" trades that the economists describe. The question is whether you can draw a general set of rules that can also accommodate two very special cases.

You know, people who have written civil service job guidelines may say it is possible to do that. You can write general rules to specify certain cases. But I suspect that the United States will find for some time that it needs to strike its own special arrangements with Japan, because its case is so unusual.

Senator PRESSLER. Would you say in general that the Asians like us to have an open market? Obviously they do, and they are very restrictive.

For example, it is really hard to debate with them. I remember when I was in Malaysia the lady we met with, our CODEL, was a lady trade minister, and I had just taken a run that morning in the market, and I saw copies of Jurassic Park, the movie, for sale, before it was for sale in the United States, on tape.

But the point is, I brought this up, and she said, "Well, that is no big deal, really. You are a big country, and some pirate probably copied it and somehow got a copy of it, and it is really nothing to your economy. This is little tiny stuff."

How do you argue with something like that?

Mr. FALLOWS. Even in Japan, say, 20 years ago, people would make that argument. They would say, if there were intellectual property problems with the United States, that the United States was big and it shouldn't worry about little Japan. The larger point here is that every nation, every economy in Asia, would love having the current system persist forever—a system of having the United States absorb surplus production from Asia and not come down on things like movie piracy.

And if that were sustainable forever and ever, then it would be OK. It is to our benefit as consumers. I think it is unsustainable, and the change is one they are going to resist.

Senator PRESSLER. Well, getting to the bottom line, if you were a Senator, how would you vote on the GATT?

Mr. FALLOWS. I would not presume to infringe on the judgment of Senators. I would vote for it as a close call. That would be my judgment, but I represent no State.

Senator PRESSLER. Thank you very much.

The CHAIRMAN. Mr. Fallows, with respect to the rancor here in the United States as compared to, let us say, in France and Europe, business is business. I have the most difficult time—there have been five Hollings textile bills pass the Senate. Four of them got through both Houses. Four of them were vetoed, one by Carter, two by President Reagan, and one by President Bush, and during all of the debate, I said "I do not bash the Japanese." If I were the Emperor I would do the same thing they were doing tomorrow morning, because it works.

Now, I think you as a witness could help us on that score. It is not a level playing field. It is a pyramid. It is not a moral question of right and wrong and the Japanese cheating, and the cry that we constantly hear here in the Congress, "be fair, be fair," I just cringe when I hear it, because it is not a question of being fair or unfair,

it is a question of whether you are working, as I understand it, to strengthen the economy or to weaken the economy. Can you elaborate on that so we have got something in the record on it?

Mr. FALLOWS. Yes. Thank you very much, Mr. Chairman.

If there were a single, simple thing that we could do to improve our discussion of these matters, I think it would be, as you suggest, to remove the word "fair" from any discussion of trade matters. There is nothing remotely unfair in what Japan has decided as its strategy for national growth and the strategy of Korea. "Unfairness" we might confine to things like the movie pirates.

When I was living in Malaysia, I used to see these videos. They obviously had been filmed in some movie house in Los Angeles. You see people getting up in front of you and talking. That may be "unfair." A national strategy is not unfair. It is neither fair nor unfair. It is either wise or foolish. It is either effective or ineffective. I think the Asian economic strategy has been both wise and effective—from their point of view.

The paramount national goal for Japan over the last century-and-a-half has been to avoid domination by a foreign power. They lost a war and were dominated briefly by the United States, but their economic strategy has reduced to a minimum their vulnerability to foreign domination. That is not "fair" or "unfair." It has been wise and effective for them.

So, our goal is to find a way to coexist as harmoniously and prosperously as we can with another nation's strategy for its own survival. If we view this as a matter of each nation pursuing as well as it can its own interest, and defining ways to harmonize those interests, we will be on much better footing than if we ever talk about unfair trade again.

The CHAIRMAN. And since the time is limited for you, and I want to yield to my colleagues here so you can be along for your commitment, relative, for example, to the handheld cellular calculators, I remember Hitachi coming into the U.S. market. They said, "We'll sell at 10 percent below the competition, and if they quote the same amount, come in again for another 10 percent below, and then come in for another 10 percent below."

I know from the experiences that we had with Boone Pickens, and I used to get, as he traveled back and forth a weekly lineup of the cost, for example, let us say of a Toyota Cressida. The last quote I had, one that sold for \$21,800 right here in Washington sold for \$8,000 more in Japan.

Will you elaborate on that system? How can they afford to just quote less and sell less continually?

Mr. FALLOWS. There are, I guess, two questions. One is why they would do it, and the other is how they can do it.

Why they would do it is a business system that places, in the long run, more emphasis on market share and production than profit, either this year or even 5 years from now. The goal is to keep people working, to keep the company present, et cetera, et cetera.

The question of how they can do it goes to the very different financial structure of Japan from the United States, where you have a stock market that serves almost none of the functions the stock market serves here.

The huge majority of shares in the Japanese stock market never change hands. They are mainly cross-owned. One company owns shares of its bank, of its suppliers. Financial market pressure for maximum possible profit now virtually does not exist, or is very weak in Japan. So, you have companies being able to afford the low-price strategy.

At the same time, since much of Japan's economy is organized around four or five very large combines that have innumerable outlets, from banking to electronics to automobiles, or whatever, there is a sort of cross-subsidy that is possible within firms that is much harder for individual firms in the United States.

So, you have a business goal that is different and a financial structure which allows companies to do this, at least for a number of years. Presumably they could not lose money forever, but they can do it for a while.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. I want to come back to this theory of production versus consumption, and I indicated Japan has more or less let the apparel industry go. You are hard pressed to find a garment that says "made in Japan," but you said they make machines. At what stage, as a productive company, do they say, "OK, we are going to have production," and they say "there are some things we are not going to do"?

I will give you an example. We have an Israeli free trade agreement. If Israel produced everything it could and sold it, it is a relative blip on our productive capacity, but every industry that was going to be in any way affected wanted an exception or a long transition, and some of them premised it on national defense.

Then we got—as I recall, it was the California avocado growers in the competition, and I was thinking to myself, national defense, and all I could think of was mock handgrenades, that we needed to have these for military training, and I cannot remember if we gave them a transition rule or not.

Would it make any difference if we let avocados go and we imported them from Mexico? I mean, I use that as an outstanding example. It probably does not. But where do you decide, because everything you are going to let go is—employment in that industry to those people is dear. How do you, from a national standpoint, make those decisions?

Mr. FALLOWS. If I had a good answer to that, or if anybody did, I think that that person would be in charge of economic policy at the moment. It is an endlessly complicated matter, for reasons you bring out.

It seems to me, however, that it is not an utterly impossible matter, and the reason I say that is that over the last—it is easy to point out examples of trends that people have not foreseen, of kinds of economic developments that catch people by surprise.

I remember Charles Shultz, when he was President Carter's economic advisor, was saying the fastest growing industry of the previous decade had been carpet installation, the second fastest was turkey processing, and these were things that were not foreseen by economists.

On the other hand, there have been certain larger technological trends that people have foreseen. You can predict with some con-

fidence that computers, information science, aviation, biotechnology are going to be important for quite a long while. Predictions made a comparable way 50 years ago seem to be borne out.

So, I think there are ways to say certain large technology areas will be of importance to us in the long run. We are not going to get into every little avocado case, but there are certain areas where we are going to have national investments, and we are going to try to guard these things.

Senator PACKWOOD. Forget about avocados. What about agriculture generally?

Mr. FALLOWS. In agriculture the United States has the luxury of being generally very efficient and generally very productive, and so if it based the decision on agriculture simply on raw efficiency, most of the time agriculture interests in the United States would win.

There are obvious exceptions, as you are aware, and so I am deliberately evading an answer to your question, because I do not think there is any clearcut one, but there are—you can tell some general difference between the avocados and the computers.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Yes. I guess my final question involves the conclusion of your article, where you talk about how Korea got going economically based upon Alice Amsden's book, that in fact they rigged their credit markets and there was massive government involvement, I suppose, whereas again generally this runs contrary to the generally accepted thing that everybody bounces around about free markets and less government involvement. Is that not correct?

Mr. FALLOWS. Yes. Many mainstream economists would say, "Oh, they were just catching up"—you know, special rules for catch-up economies. The point Amsden and others would make is that in the long run, even when you pass the catch-up stage, there are certain advantages you can get by rigging the financial market to encourage savings.

Senator PACKWOOD. You talk about how Schumpeter, if he had his career to live over, would study something different. We listen to a lot of these economists, and economists are on TV on Sunday mornings and so forth. How is the American economics profession? How have they changed in the last few years, and are they on target, pretty much?

Mr. FALLOWS. The main change over the last, say, 30 or 40 years has been to make economics more apparently scientific. There is much more emphasis on macro models, much more emphasis on underlying math. It is often difficult to find English words in professional articles.

What has been mainly left behind is the discipline of economic history, which of course was Schumpeter's great strength. What current economics is maximized for, is optimized for, is short-term or medium-term predictions of what is going to happen, or how things will respond to certain changes in the variables, but not the long-term evolutions and how economies rise and fall.

The long-term questions are very difficult for them to deal with, and so I think it is as if it had been sharpened to a very fine point,

and that point is effective where it is applied, but there are many areas it does not apply to any more.

Senator PRESSLER. Thank you very much.

The CHAIRMAN. Thank you, Senator, and Mr. Fallows, thank you. I think you and I are both now on schedule, and I responded to your request and my commitment that you have got another engagement.

I have got a thousand good questions, and I wish we could just hold this audience and keep this hearing going for hours on end, but you have given us an excellent kickoff here to this game to get the folks' attention.

There was one answer you gave that maybe you guess you would vote for GATT. That gives the balance. We wanted to have balance to this hearing. We invited the head of the Coalition for GATT, and we talked to him on Friday, Saturday, and yesterday, and they were to give us a name last evening, and they requested that they appeared another time.

But your answers maintained the credibility, so now I can continue to quote you. Thank you very, very much.

The committee will be in recess subject to call of the Chair.

[Whereupon, at 12:10 p.m., the committee adjourned.]

S. 2467, GATT IMPLEMENTING LEGISLATION

WEDNESDAY, OCTOBER 5, 1994

**U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.**

The committee met, pursuant to notice, at 9:30 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. The committee will please come to order.

We do have a vote later on this morning, and I want the Ambassador to have full time for his statement and perhaps a good part of the questioning, so if we can put our opening statements in the record—Ambassador Kantor, we welcome you back to the committee. We are pleased to have you, sir, and tell me about this GATT.

STATEMENT OF HON. MICHAEL KANTOR, UNITED STATES TRADE REPRESENTATIVE

Ambassador KANTOR. Thank you, sir. I appreciate your courtesies and kindnesses in having me here today and the opportunity to appear.

This agreement, of course, has been discussed and dissected and bisected and trisected now for 8 years. It has gone through, just in the last number of months alone, 23 different formal hearings and hundreds of informal meetings between both principals and staff and, of course, great numbers of other debates outside of the rooms of this Capitol here in this city.

It passed, of course, as you know, the House Ways and Means Committee by a vote of 35 to 3, and the Senate Finance Committee by a vote of 19 to 0.

Before I begin with a hopefully short and hopefully painless to you, Mr. Chairman, opening statement, I would like to ask your permission to put my full statement in the record.

The CHAIRMAN. Your full statement will be included, and you can highlight it as you wish.

Ambassador KANTOR. Thank you, Mr. Chairman, and we also have a file which contains a very large number of statements supporting the Uruguay Round from various and sundry organizations we would also like to put in the record at this time.

The CHAIRMAN. That will also be included.

Ambassador KANTOR. I would just like to make three points in my opening statement, Mr. Chairman: first, that our economic future in large part depends upon our ability to compete in the world economy, that second, and most important, this agreement, when implemented, will create a level playing field in trade, something that I know everyone who has looked at our concerns for the last number of years has called for, and that we have been continually frustrated by our inability to reach that goal, and third, of course, I would like to speak to the concerns over sovereignty.

I think it is important that we address those issues not only for the committee, Mr. Chairman, but I think it is a serious issue for the American people and they should rest assured that their sovereignty has not been adversely affected in any way. In fact, Mr. Chairman, I will make the point that in fact sovereignty is more protected under the Uruguay Round and this implementing legislation than it has been for 47 years under our arrangement concerning the General Agreement on Tariffs and Trade.

First, let me turn to our economic future, and our ability to compete in a world economy. I will make four or five very quick points. First of all, the Uruguay Round amounts to a 40-percent cut in tariffs around the world. Just last week, the World Economic Forum said for the first time in 9 years we were the most competitive nation on Earth. We replace Japan as No. 1. That is something we all can be proud of, frankly, Mr. Chairman.

In that regard, as the largest trading nation in the world and now the most competitive, with our workers being the most productive, if we can reduce tariffs by 40 percent and then reduce non-tariff barriers, as this agreement does, we have got to be the major winner in this Uruguay Round agreement.

No. 2, this creates landmark protection, Mr. Chairman, for intellectual property. As you know, that industry is our fastest growing industry in the country.

Let me just indicate that just last year, in the music industry alone sold \$31 billion—that is a stunning number—31 billion dollars' worth of products, \$10 billion here in the United States, \$21 billion overseas, and of the \$21 billion, 60 percent was made right here by American workers. I would just like to focus on Huntsville, AL, just for a second, and this CD by Whitney Houston.

This CD was made in a plant in Huntsville, as I said, where hundreds of workers guided it from a single studio recording to the product bought by 28 million consumers the world over.

The factory includes sales and marketing employees, customer service reps, sound engineers working with technical specs and laser equipment, technicians operating machines that molded and punched the discs, operating machines that applied polycarbonate linings, disc colors, paint mixers, silk screeners, graphic artists, packers who put the disc in the plastic cases, boxers, loading dock operators, production coordinators, and back office personnel.

I have not even touched on the preproduction and postproduction stages in which U.S. workers—U.S. workers, our musicians, writers, mixers, studio producers, technical advisers, wholesale and retail sales clerks, to name a few, made their contribution. Mr. Chairman, these are real people with real jobs.

Now, let me by sharp contrast indicate what I have here in front of me. Here are examples of what can happen if we do not protect intellectual property, and why this agreement is so important, and how it will in this area, as well as every other area covered by the agreement, make sure we play by the same rules.

These are pirated copies of Bruce Springsteen's work made in Italy. These are pirated copies of the band from Italy. Here are some pirated copies of Tom Petty and the Heartbreakers from Germany, and on and on and on.

Mr. Chairman, this is what is happening to U.S. jobs if we do not protect intellectual property, and for the first time in a multi-lateral trade agreement we are doing it and everybody is going to play by the same rules after 5 years. Developing countries have that long, of course, to come up to our standards.

This is a critical element in this Uruguay Round. I will mention it a number of times today. I have said it a number of times in the past. I am sure many of you are tired of hearing it, but I do not think we can say it enough, because it is so much in the U.S. interest.

In the agricultural sector we have made major strides in this agreement. Nearly every agricultural commodity group yesterday came out in favor of this agreement. This agreement does a number of things in that area. It cuts internal supports in Europe by 20 percent. Because of the 1989 farm bill we do not have to cut our supports at all. It cuts export subsidies by 21 percent in every commodity group. Europe must cut, by volume, by multiples more than we have to cut in terms of subsidized product over the next 6 years.

It requires tariffication. That means you take nontariff barriers in agriculture, you give them a number, you begin to reduce it, and what that does is takes the world's most competitive agricultural sector, which is the United States of America, and allows us to get our products into places that we have never gotten them in before. Because of minimum access and current access, for the first time, we will be getting rice into Japan and rice into Korea. This is a major, major step forward in agriculture.

We reduced a number of sectors in the industrial area to zero tariffs. This is the biggest worldwide tax cut in history—\$745 billion and \$36 billion tax cut here in the United States by lowering the price of goods to our consumers.

Let me just walk over to these charts for one second and indicate why this is so important to play by the same rules and to grow our economy by expanding trade.

First, let us look at population growth and labor force growth, comparing it in industrial countries to low-income developing or high-income developing countries. Obviously, as population grows, as economies begin to expand, when you create a middle class, that is where your markets of the future are going to be.

So in low-income developing countries, in high-income developing countries, they will grow in population from 1.5 to 1.7 percent over the next number of years.

In the United States, we are at 1, and all the other industrial countries at .5, nearly zero population growth. The labor force growth, look at the high-income developing countries like the Asian and Latin American countries. Their labor force is growing at 2.8.

Compare that to the United States, growing at .8. That is a critical number to keep in mind.

Now, as the labor force grows, what is going to happen in terms of economic growth? Well, you can see right here, the Pacific Basin, excluding Japan, is going to grow 6.9 percent. The planned economies, the economies in transition, Russia, the former Soviet States, Eastern Europe, grow at 5.7 to 6.9 percent, Latin America at 5.1 percent, and then you can see the developed countries growing at much lower rates, so you get a growing population, a growing middle class, of course, and a much faster growing economy.

What does that mean? Business. It means markets, it means middle class, it means incredible opportunities for U.S. workers and U.S. business.

Now, as we look at U.S. merchandise export growth, we can see where it has occurred over the last number of years. Interesting enough, Asia, excluding Japan, is our biggest export market today. Latin America is second, Japan is third, Canada is fourth, but more importantly, what is going to happen by the year 2010?

Our biggest market will be Asia, excluding Japan, but Latin America, including Mexico, will be a \$232 billion export market by the year 2000, and then if you add Latin America and Asia together, they will be one-half—one-half of our exports by the year 2010.

Now, why have I made this point? For one very simple reason. Up to now, under the agreements that form the General Agreement on Tariffs and Trade, as few as 27, but only as many as 45 countries, have adhered to the agreement on standards or subsidies or customs evaluation or import licensing or antidumping. Only that number of countries.

Now, what have the rest done? They have been classic free-riders. They have created the situation of a nonlevel playing field.

Now, what have we done in the Uruguay Round? Very simply, what we have done is, we have said everybody is going to play by the same rules, so now, in the standards area 78 more countries will have to adhere to the same standard as the 45, for a total of 123, and 96 more in subsidies, and 86 more in customs valuation, and so on.

Mr. Chairman, what we are doing in this agreement is nothing more or nothing less than saying, we are going to level the playing field. That could not be more critical to our country, to our workers, to our children and grandchildren, and to our country's economic future.

Let me make one more point in that regard. As we become more technologically proficient, which we have, as each worker becomes more productive, which they have become, and if we have a slower growing population, a slower growing labor force—and our economies will never grow as fast because we are a mature economy—we have a problem, but we have to meet it.

The problem is, if you do not expand your markets, yet you expand your productivity, you naturally lose jobs. It may sound simple, but it is true.

Now, here we have an enormous opportunity. The idea is, as you become productive and competitive and you make the rules fair, and you are the world's largest trading nation and the biggest

economy, and you have businesses that are actually investing and creating new jobs in this economy, we have got to create new markets overseas—Latin America and Asia, and others as well.

These big emerging markets are our future. They will be our future, Mr. Chairman, whether you like it or I like it, whether it is changed or not, change is inevitable. Just like on my vacation, just a few weeks ago for 1 week in South Carolina on the beaches near Georgetown, those tides were coming in and I could not stop them. My daughter was just delighted.

But I could not stop it, and we cannot stop globalization. We are not going to stop interdependence. We have got to make it our friend, and this is exactly what this agreement does.

Now, if I could just talk just for a second about sovereignty, and then I will of course be happy to answer any and all questions from you, Mr. Chairman, or members of the committee from both sides.

I would like to really address this canard that somehow U.S. sovereignty has been undercut, or is threatened by this agreement. Nothing could be further from the truth.

If I could just read you from section 102 of this bill a sentence that I think we all agree with which is critical—this bill reaffirms in section 102 the primacy of U.S. law: “No provision of any of the Uruguay Round agreements nor the application of any such provision to any person or circumstance that is inconsistent with any law of the United States shall have effect.”

I cannot imagine how the Congress could be clearer in what this implementing legislation in this round does.

Two, “No substantive right or obligation of the United States of America under this agreement can be changed without our consent.” That is right in the Uruguay Round agreement.

No. 3, Mr. Chairman: “No ruling by any dispute panel under this new dispute settlement mechanism which the Congress asked us to come back with”—three administrations, the Reagan administration, the Bush administration, now the Clinton administration—“no ruling can force us to change any Federal, State, or local law or regulation.” Not the City Council of Los Angeles, nor the Senate of the United States, can be bound by these dispute settlement rulings, and I think that is critical for the American people to understand that.

No. 4, in article IX, the first sentence, what it says about this organization, the new World Trade Organization which has been kicked from pillar to post, it says, “This organization operates by consensus.”

Now, you will say correctly, well, it has always operated by consensus, but that has been *de facto*, not *de jure*. This organization legally could have operated by majority rule for 47 years. We have lived with that circumstance. The reality is, given the power of the United States, the European Union, and Japan, it was always in the interest of the organization to operate by consensus, but now, for the first time, it is a matter of the Uruguay Round law and agreement of 123 countries that we operate by consensus.

Let me just mention one other area, the protection of human, animal, and plant life. There has been great consternation in some communities in our country that somehow we are undercutting our environmental or conservation laws, that they are going to be sub-

ject to the whims and caprice of this international bureaucracy. That is just not correct, Mr. Chairman.

We can adopt any measures in this country to achieve our chosen level of health and safety, and in environmental matters we can maintain more stringent laws than international laws under this agreement. That is specific in this agreement.

We are free to set a zero level of tolerance in terms of carcinogens. State and local governments are free to enact their own laws. State and local governments can set more stringent standards. You cannot force a change in U.S. law, as I said, due to any dispute settlement ruling in the environmental area or, frankly, any other area as well.

In addition to that, we have made some strides. The preamble to the section which involves the environment says, we are all committed to sustainable development, and there is a trade and environment committee for the first time that has been set up in a multilateral organization.

Mr. Chairman, I would not sit here and be so adamant about how important this is if I did not believe and the President did not believe this is not in the best interest of the United States of America.

Three administrations on a bipartisan basis—it began with President Reagan and was advanced by President Bush and completed by President Clinton—have believed in it, have worked for it, and have fought for it, and the Congress of the United States, both bodies, both sides, a great number of Republicans and Democrats have worked for 8 years to get this done, not because it is a political issue, not because it is a partisan issue, but because it is in the best interest of our workers, and it is in the best interest of raising wages, and it is in the best interest of creating jobs, and it is in the best interest of raising our standard of living.

We need to go forward, we need to lead the world, as we always have, in trying to make sure we raise the standards of living not only here but around the globe.

I look forward to continuing to work with you. I have enjoyed your courtesies, and hopefully can continue to enjoy those. Mr. Chairman, I look forward to your questions.

[The prepared statement of Ambassador Kantor follows:]

PREPARED STATEMENT OF AMBASSADOR MICHAEL KANTOR

THE IMPORTANCE OF THE URUGUAY ROUND

I welcome the chance to appear before the Commerce Committee today, to discuss the Uruguay Round agreement and the implementing legislation which has been submitted to Congress. That legislation has generated impressive bi-partisan support, passing the House Ways and Means Committee by a vote of 35-3, and the Senate Finance Committee by a vote of 19-0. Both committees noted the bipartisan roots of the negotiations, begun in the Reagan Administration, continued in the Bush Administration, and completed by President Clinton. Both committees noted that the bipartisan support continued, uniting members of Congress with disparate views who have not agreed on many other things.

I believe that support reflects several conclusions reached by those who have studied the agreement:

First, our economic future depends on our ability to compete in the world economy. We are rebuilding our economic strength around the productivity of our companies, farmers and workers, and our ability to export successfully. This agreement reduces tariff or non-tariff barriers all over the world, at precisely the moment when

our industries are at their most competitive. The Uruguay Round is not a favor that we are doing for the rest of the world; it plays to our strengths.

Second, this agreement gives us the level playing field that we have sought in trade. For the first time all the nations of the world will be signing on to the same set of trading rules—rules that are modelled after, and shaped by, our commitment to open markets and expanded trade. There will be no more free riders.

Third, the concerns expressed that the agreement infringes on U.S. or state sovereignty are baseless. We fully protected U.S. and state sovereignty in the agreement, and to provide further reassurance on this crucial issue, we have added significant further safeguards in the implementing legislation. Let me expand on these three basic themes.

OUR COMPETITIVE ECONOMY: THE IMPACT OF THE URUGUAY ROUND

This Administration has worked steadfastly to help build our nation's economic strength for the competition of the 21st century. Of course, this involves far more than trade policy. It requires, among other things, reducing the budget deficit, training our workers, educating our children, and investing in infrastructure and technology.

It is clear beyond question that we will have to build our future success competing in the world economy. There is no way to return to the 1950's and 1960's when our prosperity was unchallenged, and we could prosper just by focusing on our domestic market. The United States is 4 percent of the world's population; our future prosperity depends on our ability to sell to the other 96 percent.

The Uruguay Round will foster growth in this country and help us to create jobs. This is not an abstract or theoretical debate. It affects the over 7 million U.S. workers who owe their jobs to merchandise exports or the 3.5 million who owe their jobs to service exports. It affects the thousands of businesses that are competing and winning in the global economy.

We are the most productive and competitive nation in the world. From tractors to software, U.S. products are prized around the globe. In the last decade, businesses around the country have regained their competitive edge, and we are poised for a period of success in the global economy.

Five years ago, Chrysler was in desperate financial straits; today Chrysler exports jeeps to Japan, and minivans to Mexico.

Not just big firms will benefit from the Round. K.D. Dids, a small minority-owned South Bronx manufacturer of specialized clothing for dancers, has seen its export sales grow to over 25 percent of its total sales. Its largest orders now come from Germany, Japan and the Netherlands and its export sales have helped its employment grow from 20 to almost 40 people in the last two years. Lower tariffs will help these sales grow even faster.

A recent article in *Business Week* described the great economic rebound in the Midwest. Allen-Bradley Co., a 91-year-old manufacturing company based in Milwaukee has built several new assembly lines for solid-state circuit boards. Sales are now growing at a 43 percent compounded rate and 30 percent of Allen Bradley's sales are overseas, compared with 5 percent in the mid-1980s. Another company, Health-Mor Inc., in Cleveland makes high-priced vacuum cleaners and sells in 42 countries.

Increased trade is essential to our ability to raise standards of living here and create high wage jobs. In 1970, the value of trade equaled 14 percent of our GDP. By 1993, that number had doubled. A conservative estimate puts that figure at 36 percent in 2010. With trade and increasingly important part of the U.S. economy, the Uruguay Round is the right agreement at the right time for the United States.

Every billion dollars of merchandise trade exports results in 16-17 thousand new jobs here at home—with higher than average wages. A vast array of workers rely on exports for their livelihoods—and need the Uruguay Round.

Any number of examples could be cited to drive home my point—but let me try this one. This Whitney Houston CD, the soundtrack of "The Bodyguard", has sold 28 million copies in markets around the world. Recorded music is a \$31 billion dollar industry—not counting all the ancillary industries it "multiplies" through. Last year, industry sales in the United States topped \$10 billion, and sales in the rest of the world reached over \$21 billion.

Over 60 percent of that \$21 billion industry's foreign sales was of products made by Americans. This Whitney Houston CD was made in a plant in Huntsville, Alabama where hundreds of workers guided it from a single, studio recording to the product bought by 28 million consumers the world over. The factory in Huntsville includes sales and marketing employees, customer service reps, sound engineers working with technical specs and laser equipment, technicians operating machines that mold and punch the discs, technicians operating machines that apply

polycarbonate linings, disc colorists, paint mixers and silkscreeners, graphic artists who make the insert cards, packers who puts the discs into their plastic cases, boxers, loading dock operators, production coordinators, back office personnel. And I haven't even touched on the pre-production and post-production stages in which U.S. workers—our musicians, writers, mixers, studio producers, technical advisors, wholesale and retail sales clerks, to name a few, made their contribution. These are real people, and real jobs.

The Uruguay Round contains the largest tariff reduction in history. As the Department of Treasury reported, this amounts to a \$750 billion global tax cut.

Tariff cuts across the board average 40 percent. In several sectors in which the U.S. is highly competitive, they are higher. Pharmaceutical tariffs go to zero with the "Quad" countries—Canada, Japan, and the European Union. The global average reduction is 70 percent.

U.S. exports of construction machinery reached about \$4.3 billion in 1993. Tariff reductions will average 83 percent in this critical sector and go to zero in major export markets.

Exports of medical equipment, which totaled \$8.1 billion in 1993 will benefit from an average 70 percent cut, and zero tariffs in major export markets.

The United States already has among the lowest tariffs in the world. Now we are ensuring that U.S. workers and businesses compete on a level playing field.

The Uruguay Round agreement establishes rules of trade for key sectors' of our economy that are growing and becoming more important for U.S. competitiveness. The intellectual property of U.S. entrepreneurs in industries such as pharmaceuticals, entertainment and software gain new protection from piracy in world markets. These rules are critical because knowledge-based industries are the industries where we can expect future high-wage/high-skill jobs. Those workers in Huntsville that help produce the Whitney Houston CD need strong rules to protect the production of those records.

As an example of what can happen if we don't have rules to protect intellectual property, I have here a number of bootlegged and pirated CDs. These are unauthorized recordings that have been turned into CDs. These CDs I hold here include recordings of Crosby, Stills, Nash and Young from Hungary; the Eagles from France, Bruce Springsteen from Italy, the Band from Italy, and the Beach Boys from Italy. The artists are not receiving any royalties and U.S. workers, in Huntsville or elsewhere, are denied economic opportunities. The Uruguay Round will help stop the recording, reproduction and distribution of these CDs. This is what is at stake with the Uruguay Round.

The Round reforms rules of trade in agriculture, benefiting U.S. farmers. The Department of Agriculture estimates agricultural income could be \$8.6 billion greater in 2005 with the Uruguay Round.

It ensures open foreign markets for U.S. exporters of services such as accounting, advertising, computer services, tourism, engineering and construction. Finally, at a time that U.S. exports to developing countries are becoming an increasingly important area of economic opportunity, the Round ensures that developing countries live by the same trade rules as developed countries and that there will be no free riders.

The benefits will be felt across the board from our largest exporters, like aerospace and computer companies, to our fastest growing exporters, like chemical products and electronics. And it helps small businesses by reducing paperwork, simplifying or eliminating import licensing requirements, and harmonizing customs procedures.

The benefits of the Round will be felt both through higher standards of living and the creation of millions of additional high-wage, high-skilled jobs for U.S. workers in the coming decade. Economists estimate that the increased trade will pump between \$100 and \$200 billion into the U.S. economy every year after the Round is fully implemented.

LEVELLING THE PLAYING FIELD

It is well known that the United States came out of World War II economically dominant in the world. Our trade policy in the years that followed reflected that dominance. We were able to open our markets to other countries as they rebuilt, secure in our prosperity, without requiring comparable openness from them. We did not need their markets, because of our comparatively huge and prosperous domestic market.

I believe that the policy we pursued in the post-war years was the right policy for that time. We prospered, and as Western Europe and Japan rebuilt, they prospered, and joined us as bulwarks against Communism. But there is no doubt that we stayed with the habits and policies of the 1950's and 1960's far too long. By the

early 1970's, we faced intense competition in many key manufacturing sectors, as other trading nations—particularly Japan—rebuilt their industrial strength, recognized the importance of trade, targeted our open market and closed their own.

This Administration believes that trade is a two way street. We welcome the products, services and investment of other nations, but we expect—and will insist—that other nations be comparably open to our products, services and investment. We have said we will open foreign markets multilaterally where possible, regionally where appropriate and bilaterally where necessary.

The Uruguay Round reflects the recognition that the United States is more open than other countries, and requires them to move toward our level of openness. Other nations will cut tariffs more, because our tariffs are already low. Other nations will give up non-tariff barriers that we gave up years ago. Other nations will begin to provide the patent and copyright protection that we provided long ago.

And they will no longer be able to pick and choose which rules to follow, and which they don't. Before the Uruguay Round, between 27 and 45 countries were signatories to the five codes relating to various barriers in the GATT. With the Uruguay Round, 123 countries are signatories for all five codes. In the Uruguay Round, which is a single undertaking, each nation signs on to all the obligations of the agreement. This is the great accomplishment of the agreement.

We have bound the developing countries, these very same countries where potential growth is so great, into the global trading system. That eliminates the "free rider" problem which existed in the GATT. The Uruguay Round substantially reduces non-tariff barriers and binds them to international trade rules for the first time. The Round brings them into the global trading system and creates a foundation on which to increase trade with these countries.

The Asia Pacific region has the fastest growth in the world. East Asia is the number one export market for U.S. products. U.S. trans-Pacific trade was 50 percent more than our trans-Atlantic trade in 1992.

Latin America is the second fastest growing economic region. Since 1989, U.S. exports to Latin America and the Caribbean increased over 50 percent and are growing at over—twice the rate of U.S. exports to the rest of the world, making this region our second fastest growing market.

These trends will continue. These two areas, along with other economies in transition, will experience the fastest growth in the world in the next decade. U.S. exports to Asia, excluding Japan, are expected to reach \$248 billion by 2010. In Latin America, the figure is \$232 billion. These so-called "big emerging markets" will experience a \$971 billion increase in imports by 2010.

SAFEGUARDING OUR SOVEREIGNTY

Throughout the debate, members of Congress and the public have expressed concern about the effect of joining the World Trade Organization (WTO) on our sovereignty and our national interests. The Administration believes that those concerns have no foundation. We have been gratified that organizations ranging from the Consumers Union to the American Bar Association to the Heritage Foundation have reached the same conclusion. Nevertheless, we believe that public confidence in the WTO requires full understanding of how the agreement actually works, and additional assurances, which we have included in the legislation, that our sovereignty will be fully protected.

U.S. Law Takes Precedence Over the WTO

First, the implementing bill reaffirms the primacy of U.S. law. Section 102(a)(1) of the bill provides that:

"No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect."

Only Congress and State legislatures can change U.S. laws. The bill states clearly that the new agreements will not change that fact.

Decision Making and Congressional Oversight of the WTO

Concern has also been expressed regarding whether WTO voting procedures could be used against the United States. Some have questioned whether, over time, the new agreements will serve our national interests.

As I stated previously, the Uruguay Round agreements contain stronger safeguards for U.S. rights than GATT 1947. The Agreements codify the GATT practice of decision making by consensus. However, both GATT 1947 and the Uruguay Round Agreements provide for voting if there is a failure to reach a decision by consensus and both GATT 1947 and the Uruguay Round Agreements use the rule of one-country-one vote. The GATT has a long tradition of decision making by consen-

sus—the last vote on a trade policy matter was taken in 1959—and we see no reason for his to change.

Even if there should be a vote in the WTO, the Uruguay Round Agreements include stronger safeguards to protect U.S. interests than GATT 1947. For example, changes in key provisions, such as most-favored nation treatment, decision making and the dispute settlement rules can be made only by consensus. For other provisions, super-majorities are required and changes that affect the rights and obligations of the United States apply only if we agree to them.

Recognizing the importance of this issue, however, the implementing bill requires the Administration to inform and consult with Congressional committees if the WTO schedules a vote that could substantially affect U.S. interests. Although the Uruguay Round agreements make "consensus," not voting, the operative decision-making procedure in the new WTO, the consultation requirement in the bill makes sure that if a vote does take place the Administration will coordinate its response with Congress.

The bill also requires the Administration to inform Congress annually on how the WTO is operating in key areas. The annual report will describe (1) the WTO's programs and activities; (2) its budget and personnel, and (3) the status of WTO disputes involving the United States.

In the event the new agreements do not serve our national interests, the bill sets up a special, expedited procedure that will allow Members to decide every five years whether to revoke approval of the Agreements. To inform Congressional deliberations, the Administration must include additional information in the annual report in these years describing how the Agreements have affected U.S. interests over the previous five-year period.

Dispute Settlement

The Uruguay Round Agreements also include a new Dispute Settlement Understanding (DSU) that significantly improves the process for resolving differences over rights and obligations under the Agreements. Section 301 already requires us to use dispute settlement when we seek to enforce our rights under a trade agreement, and we are a frequent plaintiff in the GATT. In the past, our efforts to enforce our rights were often frustrated when the losing party blocked adoption of panel recommendations. In 1988, Congress made obtaining improvements in dispute settlement a principal U.S. negotiating objective for the Round.

The Uruguay Round Agreements achieve that objective by setting strict time limits for the panel process and implementation of panel recommendations. The DSU creates an Appellate Body that will help ensure consistency in legal interpretation and result in better reports. Moreover, if a panel finds a country's laws inconsistent with a Uruguay Round agreement and the country does not change its laws within an agreed time, offer satisfactory trade compensation, or reach some other mutually acceptable solution, the DSU provides for automatic authorization of retaliation on request.

That said, dispute settlement panels formed under the new agreement will not have the power to change U.S. law or order us to change our laws. We will remain free, as we are under the GATT today, not to implement panel reports.

The implementing bill provides an active and informed role for Congress in the dispute settlement process. The bill ensures that in any dispute settlement proceeding brought against the United States, the Administration will: 1) inform and consult with all relevant Congressional committees throughout the course of the proceedings, 2) make all U.S. submissions available to the public, 3) and consider public comments in connection with the dispute.

In the event a WTO panel finds that we haven't been acting consistently with our obligations, the Administration will consult with the Committees on whether to implement the panel's recommendations and, if so, how that should be done.

Transparency Issues

Much concern has been expressed about the operation of so-called "secret tribunals" in the GATT and WTO. WTO dispute settlement panels, like GATT panels, are not tribunals. Their rulings do not have the force of law, nor do they create binding precedent. They are more akin to arbitration between parties and as in arbitration the best outcome is mutually agreed settlement of the issue under dispute. Moreover, the parties to a dispute actually agree to the panelists who hear the dispute; the specter of unqualified biased panelists being foisted off on the U.S. is simply baseless.

Furthermore, GATT panel reports, which are published and made available to the public upon adoption, have traditionally included thorough discussions of the argu-

ments made by the parties to the dispute and the panel's findings and reasoning underlying its recommendations. The same will be true of WTO panel reports.

The Uruguay Round Agreements provide for increased transparency in the dispute settlement process. For example, the Agreements permit member governments to make available to the public their written submissions to the panel prior to issuance of the panel report and requires each member to provide a non-confidential summary of its submission, upon request, if that member does not release its submissions.

With respect to U.S. participation in-dispute settlement proceedings, the implementing legislation will significantly improve public access to information about disputes involving the United States. USTR will publish information promptly on each dispute in which the United States is involved and will provide an opportunity for the public to submit written comments on the matter. USTR will take these comments, as well as advice from Congressional committees and other advisors, into account in preparing U.S. submissions. In addition, the bill requires USTR to maintain a file accessible to the public containing U.S. submissions to each dispute settlement panel, a list of submissions from the public, and the panel report and Appellate Body report issued in a particular dispute.

I recognize that these improvements are only a first step and much more needs to be done. We are committed to obtaining improved transparency and we intend to report to Congress annually on efforts to make WTO dispute settlement procedures more open and transparent.

State Laws Are Fully Protected

The Uruguay Round Agreements were drafted with our State laws clearly in mind. The rules established—such as nondiscriminatory treatment for foreign products—are rules our States already live by.

There has only been one challenge brought against State laws under the GATT in the past 30 years. There is no reason to think many will be brought under the new agreements. Still, if a dispute arises, the bill provides that the States concerned will be full partners in any dispute settlement proceedings concerning those laws. And WTO panels will have no power to change—or order changes in—State laws.

In addition, the bill makes clear that foreign governments and private parties cannot seek to enforce the Uruguay Round Agreements in U.S. courts.

A number of State Attorneys General raised questions early on about how the new agreements might affect State laws. After working out series of provisions in implementing package with our committees and the Administration, the leadership of the National Association of State Attorneys General expressed satisfaction over the way State concerns have been addressed.

Environmental and Safety Concerns

Our negotiators had strong environmental and food safety laws fully in mind in concluding the Uruguay Round agreements with our trading partners. As a result, the agreements recognize the right of each government to protect human, animal, and plant life and health, the environment, and consumers and to set the level of protection for health, the environment, and consumers—as well as the level of safety—that the government considers appropriate.

Under the WTO, most food safety laws will be covered by the "Agreement on the Application of Sanitary and Phytosanitary Measures" (S&P Agreement). The Agreement will permit us to continue to reject food imports that are not safe. The S&P Agreement will not require the Federal or State Governments to adopt lower food safety standards.

The S&P Agreement calls for food safety rules to be based on "scientific principles." That is important because many countries reject our agricultural exports on non-scientific grounds. As a general matter, the FDA and EPA (which participated directly in the negotiation of the S&P Agreement) base their food safety regulations on science. Thus, meeting the basic requirement of the S&P Agreement should pose no problem for U.S. food safety rules.

It is worth noting that the rule in the Agreement requiring a scientific basis applies to S&P measures. It does not apply to the level of food safety that those measures are designed to achieve. Each country and—in the case of the United States each State—is free to establish the level of protection it deems appropriate. That means, for example, that the "zero tolerance" level for carcinogens mandated by the Federal "Delaney clauses" are entirely consistent with the Uruguay Round agreements.

While the S&P Agreement contains a general obligation to use international standards, it protects the ability of governments to use more stringent standards if they have a "scientific justification." The S&P Agreement makes explicit that there

is a scientific justification if the government determines that the relevant international standard does not provide the level of food safety that the government determines to be appropriate. This language serves to make clear that no "downward harmonization" of our laws is required.

Most environmental and health-based product standards for industrial and consumer goods will be covered by the Agreement on Technical Barriers to Trade (TBT Agreement). The new TBT Agreement carries forward, with some clarifying and strengthening modifications, the provisions of the existing GATT TBT Code, which entered into force for the United States in 1980.

The TBT Agreement recognizes that countries may set standards for products in order to protect human life, health, or safety or the environment. U.S. regulations prescribing safety standards for infant clothing, or banning the presence of PCBs in consumer products, are the types of product-oriented measures covered by the TBT agreement. The Agreement makes clear that the level of protection the government seeks to achieve through standards of this kind is not subject to challenge.

In general, our clean air and clean water laws and regulations are directed at controlling pollution generated in industrial operations. Not only do these laws generally not raise trade-related questions, they are generally not even covered by the new TBT Agreement since they do not set product standards. Where those laws do set product standards, as for automobile emission controls, they will be treated like the other product standards described above.

On the question of environmental standards, let me point out that the GATT panel report released last Friday lays to rest fears that WTO panels will interpret the GATT in a way that challenges our ability to safeguard our environment. The panel report on three U.S. automobile laws (the luxury tax, gas guzzler tax, and Corporate Average Fuel Economy (CAFE) requirements) explicitly upheld the sovereign power of governments to regulate their markets and their environments. The panel report confirms the broad discretion of governments to distinguish among products in order to achieve legitimate domestic policy objectives, such as progressive taxation, fuel conservation, clean air and water, and responsible energy use.

In sum, the Administration believes that implementation of the Uruguay Round this year is crucial for the economic future of the United States. This has been a long journey, but we have taken the lead throughout. The world looks to us to finish the job.

The CHAIRMAN. The record will show that the distinguished Ambassador and I started playing tennis together back when I was chairman of the Democratic Senatorial Campaign Committee in 1972, and we have been friends since, and we continue to be friends now.

Most respectfully, Mr. Ambassador, I am just as adamant in my conviction—you use the word "adamant"—about the best interests of the people of the United States, not just South Carolina, because the media tries to tie me solely to textiles, and I am delighted to be in textiles, but I am worried about the aircraft jobs, and I am worried about the automobile jobs, and I am worried about the IBM high-technology jobs just as well.

Most respectfully, my view comes from a much, much longer experience and a much harder experience in the context that I carpetbagged that Northeast. As Governor of South Carolina I used to travel up there on the weekends and be down at 1 Wall Street and Irving Trust Building on the 32d floor talking to the board, bringing that industry in, and we had the best worker training, and we attracted the blue chip industries.

Now, we are not getting the blue chippers any more. Yes, we are getting the foreign industry, and I welcome that. As Governor I made the first trip to Germany. We got 100 German plants, 48 Japanese plants, and numerous other foreign investors, but now our industries are leaving—Cummings Engine, Pratt & Reid that makes the pianos, United Technologies, not just textiles. Just last month, Baxter Medical in Kingstree is leaving to go to Malaysia.

So, my hard experience is right there, and it is a much longer experience, and I can tell you we got in lockstep in your presentation here when you said Heartbreakers—you had a CD by the Heartbreakers. Heartbreak, that is what this thing gives me. I can tell you that right now.

Now, going right to the point—let us use this clock, because we are glad to have the attendance here and we want everybody to get a round. We have two important witnesses.

With respect to sovereignty, you cannot have it both ways. You came up here in June, and I have got the exact words, the same you used in your hearings at the Ways and Means Committee—under WTO we cannot block a dispute settlements ruling. That is article 16 of the dispute resolution agreement. There is no unilateral action allowed, and this thing about the agreement, you cannot change it, you are right. As of this minute, no agreement has changed. That is what we are debating.

You want us to agree. I do not want to agree to this, because it says here, except as otherwise provided article IX, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting, and you study it on down—and I am a good lawyer—and you find out I have got 1 of 116 votes. Castro cancels me. I look at 83 percent of the composition of this particular entity—emerging nations. They vote against me a majority of the times in the United Nations.

Mexico, they want the head of Mexico to be the director of the WTO. Mexico is voting against us in the United Nations right now 79.9 percent of the time, and so I am looking at you, my client, and I am advising you, and I say, hold up on this contract.

With respect to the United Nations we never relinquished our military or national security to the U.N. without a veto. The factis, if we did not have a veto, you would never have the country of Israel, and we know that from hard experience.

Now, you said heretofore you had to have consensus to adopt a GATT panel report. Now, to block that dispute settlement ruling under the WTO, I have got to get a consensus of all 100 percent, so the shoe is on the other foot.

But let me say most advisedly and respectfully, we have heard this before, and I will never forget Ambassador Strauss coming up with the same sing-song, the same thing about billions and billions of dollars being added to the economy by the Tokyo Round, and studies showed it was \$700 million. The administration predicted 100,000 jobs would be created, but GAO said it resulted in only 700 to 1,400 jobs.

So, I have learned how to listen to these special trade representatives, and they soup up the numbers about thousands of jobs and everything else, and I look back on hard experience the last 10 years, and I am seeing, wait a minute, we have had an outflow of 3.2 million manufacturing jobs. We have had an outflow financially the greatest in the history of any nation anywhere in the world of \$1.4 trillion in our deficit, the balance of trade.

I look at those who are getting jobs that are only part-time, and those who are holding the jobs are taking home 20 percent less pay, and then I am looking at this GATT crowd.

I look at Secretary Reich's book, "The Work of Nations." I was just on a program with him, so I turn to page 95, and he says the Fortune 500 have not added one net new job in the United States in 15 years—page 95. Read it.

Then I look at the first 6 months of last year, and according to Fortune magazine we have lost 255,000 jobs. And I am listening on TV yesterday morning. American Express said they were firing 4,800 workers, and you can go down the list.

You have got the layoffs of Kodak with 10,000, Proctor and Gamble with 13,000, IBM with 60,000, General Motors with 70,000—you say I am protectionist. Look at your country. Boeing, 28,000.

We are losing the best of the best, all of these jobs around, and then I look at another Fortune article, and find out here that they have invested since 1990 \$50 billion overseas, and yet the put on a full court press for the GATT and say yes for jobs, and all that. You are talking about those jobs, yeah, but they are jobs overseas.

You said that is a great opportunity. Look at our trade deficits with the Asian countries: Korea, a deficit in the balance of trade of \$2.3 billion; China, \$25 billion; Malaysia, a deficit of \$4.5 billion; Singapore, \$1.1 billion; Taiwan, \$8.9 billion; Thailand, \$4.8 billion—all of these are deficits—India, \$1.8 billion; and Japan \$60 billion. I am going out of business. You are giving away the store.

Something has got to change around this town so we will understand about middle America. Here the crowd that came to town to bolster middle America is decimating middle America, so it is not about being adamant or sincere. I want you to know here and now that we are not leveling the playing field. On the playing field, the players are not playing by the same rules, and we use you as my witness.

Why are you trying to get a better agreement with Japan? Of course, you could not get financial services in the GATT. They said the President wants to lead. You could not get it when you went there at Marrakesh in April.

The President went to the G-7 conference to lead, as he says, in June, and when he mentioned financial services and an economic agreement they said, "No thank you."

He is not leading. We cannot lead with a \$130 billion deficit. In fact, Business magazine says Japan is leaving us in the dust. We are not leaders, we are followers.

But how can you play by the same rules when you have got to get a separate agreement with Japan on account of keiretsu, or with Germany with its cartels. The inner workings are not changed a bit by your GATT.

Excuse me, the time is going to get me. Let me let you answer. [Laughter.]

Ambassador KANTOR. It is always a challenge for me. First of all, the longer I am in this job, I am also learning by hard experience, Mr. Chairman.

Let me just say that if everything you said was correct—and I do not agree with all of it, as you know, but even if it was—you should be the first one working with me to say: "Let us change it."

The CHAIRMAN. That is what I want to do is change it. What is incorrect; by the way?

Ambassador KANTOR. Let us take this and reach this agreement and play by the same rules and level the playing field, and let me just say what we were able to accomplish with the President's leadership with Japan this last weekend is a step in the right direction.

Did we solve all of our problems with Japan? No, sir, we did not. Did we make a beginning? Yes, we did, and we will have to continue to work at that on a constant basis.

Now, let me just make two or three points in answer.

The CHAIRMAN. Well, you are eliminating me with this playing field. You are not leveling the playing field with the WTO. Go right ahead, and then I will recognize Senator Breaux.

Ambassador KANTOR. I want you on the playing field, Mr. Chairman. I want you on my team.

First of all, in terms of manufacturing jobs, in the last 13 months in a row manufacturing production in this country has increased. In the last 11 months in a row, manufacturing jobs have increased each month.

The CHAIRMAN. How about the truth of that statement? Will you get the votes on the truth of that statement? I can show you where manufacturing jobs have decreased since the Clinton administration has been in office, and I can show you also that over the past 10 years we have gone from 26.3 percent of our workforce in manufacturing to 16.6 percent, a diminution and loss of our manufacturing backbone.

Ambassador KANTOR. But our production continues to rise, including our employment—and may I just finish, Mr. Chairman?

The CHAIRMAN. What about the manufacturing jobs? Do not double-talk me.

Ambassador KANTOR. Jobs have gone up in the last 11 months in manufacturing, 4.4 million new jobs in our economy in the last 19 months, 90-some-odd percent, about 97 percent in the private sector, not in the public sector. Only 3 percent in the public sector, which I think is a tribute to the Congress and this President working together for economic change in the country on a bipartisan basis, and it has to continue.

But let me make a couple of other comments on what you just talked about.

One, on dispute settlement, let me answer it directly, because you made a very important point there. No, we cannot block rulings any more, you are right. It is the Congress who asked us to come back with a dispute settlement mechanism that worked without blocking.

Now, let me make a second point. We have won over 80 percent of the time we have brought cases in Geneva, and when we have been on the defense we have won 50 percent of the time. We have been the most successful country in the world in the GATT for 47 years in the old dispute settlement mechanism, but you know what happened? When we would win, the Europeans or others would block those rulings. It frustrated us, especially the agriculture community, and we do not want that to happen again.

Mr. Chairman, we live by our international understandings. We do not violate them. Others unfortunately have in the past. I hope it does not happen in the future, but if it does, we need to have some arbitration mechanism, and that is all this is, by the way.

One of the most interesting comments by someone who is opposed to this treaty is that there is some sort of secret panel out there of judges trying to control the United States of America. These are arbitration panels, and we can veto any member of the panel at any time, and frankly, Mr. Chairman——

The CHAIRMAN. You just said you could not block the decision. Ambassador KANTOR. We do not want to block the decision, because we win.

The CHAIRMAN. But you know the system, if you cannot agree on the panel, the director appoints them—Salinas from Mexico.

Ambassador KANTOR. Well, I would say that President Salinas helped us in our NAFTA agreement, since we increased our exports by 19 percent over the last 7 months——

The CHAIRMAN. I do not want to debate that with you. Let us go to Senator Breaux.

OPENING STATEMENT OF SENATOR BREAUX

Senator BREAUX. Well, thank you very much, Mr. Ambassador. I do want to start off by saying that you are in a very difficult position, and I think you are doing a terrific job in this administration, and I think you ought to be personally commended for the good work with the Japanese agreement.

As one who has argued and debated with them on opening up some of their trading opportunities for over 20 years, I think that the work that you did on the agreement is very positive, and it was not accomplished without a great deal of difficult work.

I am pleased that the CAFE standards and the GATT dispute settlement turned out as well as they did. I know that your office was very involved in that, and I think that those are both very positive accomplishments, and I congratulate you for them.

I think that the theory that some have utilized with regard to arguments against GATT can be summarized by saying, even if we have a level playing field we cannot compete, because other countries have much lower wages, and that even with a lower playing field they are going to beat our brains out, because you can hire 47 Vietnamese for the price of 1 American, or as Sir Goldsmith points out, 47 Vietnamese for the price of 1 Frenchman, and you are never going to be able to compete no matter how level the playing field is.

I disagree with that. I think that if you do get a level playing field, which the GATT hopefully brings about, the next question is what type of team you put on that field, and that is always going to be the question.

The productivity of the American worker, the determination of the American worker, the ability to be aggressive in an international community, is what we have to, as a nation, concentrate on. The level playing field without a good team to put on that field is never going to accomplish what our goals are.

So, I think that if we can get a good GATT agreement, the next thing that we as a nation have to concentrate on is improving the team we put on that field through education, through job training, through incentives economically to help them be the very best that they can be, and then put that team on a level playing field, and

I think we will compete against any country, because wages is just one part of the competition equation.

Let me ask some more specific questions. Sir Goldsmith, in his testimony to follow yours, getting back to this unemployment question, says the following, that the losers under international GATT agreement would be those people who become unemployed as a result of production being moved to low-cost areas, and I would like you to address that.

I think his theory is that you would knock down the trade barriers, all the manufacturing and all the jobs will go to the places where you can hire 47 Vietnamese for the price of 1 American. What we are going to suffer is unemployment, because everything is going to be manufactured somewhere else. I would like you to comment on that statement.

Ambassador KANTOR. Well, the historic evidence, of course, is to the contrary. There is little and probably no evidence that any country in history ever increased its wealth by closing its borders. Fifteenth century China would be one example, the Soviet Union, beginning in 1917, collapsing internally because they closed their borders to trade and the outside world and fell apart, the United States in the 1930's, Latin America in the 1970's—that is point No. 1. So, the evidence is just the opposite.

No. 2, the invocation after the Second World War of the World Bank, IMF, and the GATT arrangements, issued the greatest expansion and growth of any economy here in the United States of any country in the history of humankind, and that is because we began to engage in a world economy where we built on our strengths and not on our weaknesses.

No. 3, it is not just by chance that the Indians or the Pakistanis closed their markets to our textiles and our apparel. There is a reason for that, because they realized they cannot compete.

Now, we are working very hard to open up their economies. Something interesting is happening in our textile and apparel industry. Since 1991, our exports have grown faster than our imports. The increase in our exports, in just 1993–94 in textiles and apparel has been 7.58 percent. Imports have only increased 4.45 percent.

Senator BREAU. But doesn't every country we are probably exporting to have a lower wage base than we do?

Ambassador KANTOR. They have a lower wage base, but they are less productive. Productivity is not just wages, as you know, Senator Breau. It is much more than that. It is infrastructure, it is communications, it is availability of transportation. It has to do with training. It has to do with education.

Senator BREAU. It is design. It is creation.

Ambassador KANTOR. It is design, it is creation, it is all those things. That is why our exports to Mexico have increased so rapidly in the last 7 months, by 19 percent. We literally are outcompeting businesses that use workers, of course, at much lower wages.

That has been the evidence. The evidence is just the opposite from what others have suggested.

Senator BREAU. Let me ask another question that the chairman raised, which I think is a very legitimate one. It is the question of the fact that if we have a World Trade Organization somehow run-

ning the trade rules and regulations, they are the umpire. They are the referee. If the group that serves as the referee is 120 nations, or what-have-you, and the United States has 1 vote, I mean, are we not giving up our legitimate interest?

I mean, it always disturbs me in international meetings when countries that are the size of this building have the same equal vote as the United States, and I am not saying anything derogatory against them because of their size, but to give them in these international organizations the same weight as the United States or any other developed country seems very unfair. Can you comment on that?

Ambassador KANTOR. I share your concerns. I share the chairman's concerns. We have talked about this. I think we have all talked about it.

No. 1, we have operated for 47 years in an organization that operated by majority rule, yet de facto they operated by consensus. Now, that is part of the article IX that operates by consensus.

The chairman is right. There are times when you can have votes, but no substantive right or obligation of the United States can be altered or changed without our consent. Clearly every country has that right, by the way, not just the United States of America.

So, those are two points I think we have to remember as we look at this organization.

But let me say, No. 3, there is something in this implementing legislation that we should not forget. We have agreed with the Congress, Republicans and Democrats, that every 5 years this Congress, House and Senate, can take up the question of whether we should remain in the WTO and vote it up or down, and send it to whomever the President of the United States is 10 years from now. Five years from now, I expect this President will still be here.

And so this is something that protects everyone here who has some concerns. And, look, the concerns are legitimate. This is not a perfect agreement. At least I will never be able to come back to you with a perfect agreement. Maybe there is some USTR who will come after me with one, but I certainly cannot. But it is so much better than where we are today, and it is critical to get this done if we are going to continue this expansion that we are in, and we are beginning to get a recovery in Europe and Japan as well.

It is not just by chance that the stock market dropped precipitously yesterday. There were rumors all over this town about what might or might not happen in the other body.

I believe it is critical to create a psychological confidence not only in this country but around the world. We are going to go forward because we recognize that globalization, interdependence, playing by the same rules is so critical.

Senator BREAU. Thank you, Mr. Ambassador. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Packwood.

OPENING STATEMENT OF SENATOR PACKWOOD

Senator PACKWOOD. I am always struck, Mr. Ambassador, by the argument that per se, ipso facto, if you reduce employment that is a step in the wrong direction. If we had that view about agriculture we would still be employing half the people in this country in pro-

ducing food. We take it as a step of progress that from 1900 to 2000 we have gone from about one-half the country on the farm to 2 percent, and we still produce more than we had, and we hold that up as a hallmark of success.

And yet, at the same time, General Motors used to need 10 people to produce a car and can now do it with 2 people, somehow that is not success. I do not understand the difference. Everybody gets more productive.

And I want to ask you a specific question in relation to the chairman's question about manufacturing first, in the United States, and then generically.

As I recall the figures, our manufacturing base—not percent of gross national product but base—has not changed much. The new jobs are coming by and large in nonmanufacturing sectors. Therefore, the GNP is getting bigger. And as manufacturing is relatively static, and I am not using that in the derogatory term, it becomes a smaller percent of the whole, but the whole is growing and manufacturing is not going down.

Is that roughly the same trend in most of the major industrialized countries, that their growth sector is in services, their growth sector is elsewhere, and in manufacturing it pretty much mirrors ours?

Ambassador KANTOR. That is exactly right. Frankly, one of the things that is interesting and which we are not able to calculate, and I wish we had the ability to do so, as manufacturing jobs have gone down yet productivity has gone up, as you suggest, and that is exactly the case, Senator, there are many more jobs associated with each job in manufacturing, whether creating, design, computer software, all kinds of allied jobs that we do not count in terms of manufacturing and the service industries, but make that worker in the plant that much more productive.

Let me make one comment because I think it fits right into this, and it is something the chairman said earlier.

I was in New Haven, CT. I went out to a plant called Firelight. Five years ago, Firelight had 5 percent of their sales—they were about a \$50 million company then. They are \$120 million today. They are not a Fortune 500 company.

Five percent of their sales were in foreign sales, overseas. Today it is 50 percent. Almost all of their growth has come in foreign sales. They are one of the world's leaders technologically.

I walked over to a fax machine where they were getting orders from around the world, Malaysia, Indonesia. I just walked over there and saw them coming in to see where they were coming in from.

I walked outside and there was a sign out front, Senator, which is a welcome sign to Republicans and Democrats and everyone in this country—help wanted. We have not seen that in this country in the last number of years, and it is something that ought to do our hearts good. But it is help wanted because we are competing and winning in a world economy which is growing.

And I have never been so struck by a clear example of what you are talking about and what we are talking about, trying to work together on a bipartisan basis, to use the Uruguay Round to continue to grow these signs across the country, "help wanted."

Senator PACKWOOD. The next question, dispute settlement. Of necessity the Finance Committee has the largest burden in these trade agreements because of our jurisdiction over trade. I can vouch for the fact that if there was any single thing we pushed you on, it was on dispute resolution because we were mad about being blocked. We were winning—if you want to call it a judgment, we were winning the judgments but we could not enforce them.

And time and again when you would come to appear before us we would get back to that issue about are you getting some method of enforcement.

Now, let me ask you if this is a correct assessment. Indeed, any dispute settlement that goes against us cannot compel us to change our laws. If we choose not to comply with it they can take retaliatory action against us, as we can in the opposite situation. But this is something that we have not been trying to avoid. It is something we have been striving for.

Ambassador KANTOR. That is exactly right. The now famous Marine Mammal Protection Act, the tuna-dolphin case in which we did not prevail in Geneva—if we decide, which I think this Congress will, not to change our law it will cost us the grand total in trade of less than \$250,000. That is on a total trade base of \$1.7 trillion. That is what happens.

So, I think this is a canard. It has been vastly overstated. We are the big winners with this dispute settlement mechanism.

The Finance Committee of this body has pushed and shoved, and you are right, myself and Ambassador Hills before me and before that Ambassador Yeutter, to come back with this mechanism. And now you have Republicans and Democrats agreeing on it. It is in the best interest of the country.

Senator PACKWOOD. We do not grow a lot of soybeans in Oregon, but I do not know how long I heard about that soybean case. And we won it, and we won it, and we won it, and we could not enforce it, and they would not comply. And this was big. This was not marine mammal. This was big bucks and we could not enforce it.

Ambassador KANTOR. And, of course, we just won a case, the CAFE law and the gas guzzler law were just upheld due to the good work and fine work of some lawyers in our office with help from a lot of other folks in both administrations, frankly, Senator, and I think that should give all of us confidence that our laws are properly done by this Congress in working with the administration, Republican or Democrat, and will be upheld by these panels when challenged.

Senator PACKWOOD. The next question—you have in the GATT agreement a 3-year timeframe for harmonizing rules of origin. Why, in terms of implementing this agreement, was it necessary for you to put in a shorter timeframe to change the rules of origin?

Ambassador KANTOR. One of the things that we have all tried to work on is to make sure our industries are kept competitive as well as productive. We are the only country in the world that has had a "cutting" rule of origin, and that is what I am sure you are referring to, versus an assembly rule of origin.

That made no sense frankly, Senator, from anyone's point of view. It was allowing frankly the Chinese to send apparel and textiles into this country through Hong Kong, and use their quotas be-

cause of fair addition to the value of the goods by the cutting in Hong Kong versus the assembly, which was being done in China. There are other examples of that. That one comes to mind.

By the way, as a footnote, something we are very interested in—we believe now imports of textiles and apparel from China for the first time in I guess 17 years will be down and down by almost 5 percent because we have a textile ambassador who did a marvelous job, after we invoked sanctions, in drawing an agreement with China which brought them down to zero growth. Now they are less than zero growth this year.

But let me go back. The rule of origin is something this administration supported with many Members of Congress on both sides of the aisle. Senator Breaux, I think, introduced it over here, Representative Cardin on the House side, because it harmonized us with the rest of the world. It addressed the problem we are facing that was so difficult.

But no one need worry. We still have to go through the Treasury Department and write the regulations under the rules. Senator Breaux has insisted on open process. This administration will adhere to that. We also have international obligations we will adhere to, of course. We have to relook at quotas.

The fact is, though, we must change the rule of origin if we are going to remain competitive. It is something that was frankly not fair to our textile and apparel industry the way we were doing it, and I believe it is important that we did it the way we have in this agreement.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Rockefeller.

OPENING STATEMENT OF SENATOR ROCKEFELLER

Senator ROCKEFELLER. Thank you, Mr. Chairman. Mr. Ambassador, I want to congratulate you for what you have done, partly because I have seen you at work. I think you have the hardest job in the U.S. Government other than the one that was described in the Washington Post this morning as Andrew Friendly who is with the President all the time. [Laughter.]

Well, he is his gofer and he has got to keep the President on time, and that is something which is very hard to do for any mortal.

But I am just looking at a list here of sections that I had a particular interest in in the GATT. And I took a trip over to Geneva, I guess I left just the day you arrived, but I was very, very concerned about—in a State like West Virginia which is so dependent upon what happens in agreements like GATT where we have lost more than 10 percent of our population in each of the last two decades. So, you can understand my sensitivity about job loss and the possibilities, and that is why I think that my strong support for GATT says something.

We worked hard on intellectual property, section 337. That was resolved in a way which is entirely satisfactory to us, and you have made some mention of that this morning. Captive production is enormously important to a State like West Virginia. That was resolved entirely satisfactorily for us.

Duty absorption in sunset matters—circumvention and diversion—the whole question of countries taking products through other countries and into this country, that was solved. I mean, all these were hot button issues with great residues of anger attached to each of them, but that was done well.

Injury determination, causation, so-called a cause versus the cause, and that was done, settled to the advantage of fairness in our country and my State.

Related party importers are excluded if they oppose petitions. That was complicated, important, and resolved satisfactorily. Subsidies, sunsets, negligible imports, nonmarket economies—remember that was just desperately hot button stuff, but that was left out. That was done, negotiated by you. I do not know how you did it but you got that out.

Short supply—of just enormous importance to the steel industry and others in my State. That was resolved to the satisfaction—that was killed.

And all of these things were really quite extraordinary works on your part, many all night negotiating sessions and the rest.

And I am just thinking that as you say, we are changing. One of the things that I have been kind of amazed by is people do not pay much attention to how much the Japanese themselves are changing. And one of the very first things that was actually sort of slipped into the GATT, sort of unbeknownst to the world, was the fact that rice would be imported into their country. And that was one the earliest, I think, areas that was just kind of put in there and that was very skillfully done. I think that was under the previous administration. It does not make any difference. It was done and it was very effective.

Our distinguished chairman is talking about job loss. We have had a lot of job loss in West Virginia, and he is worried about job loss in this country. We have seen every day in the headlines companies reducing.

That is happening in Japan, too. I usually go there a couple of times a year, and I remember going to an undisclosed camera maker. And in their system they have, as you know, a system of suppliers and it is built on long tradition and long loyalty.

And I remember going to sort of the bottom end supplier where the lenses were just—the beginning of the grinding took place, and it was not modern, it was very old, and the wages were not as good, and it was not a very pretty place, but it had a relationship with this camera company for a long time.

And I went in and I talked with the manager, and then we went upstairs and I said, "What is your future?" He said, "My future is zero because they are going to take everything that I am doing in this factory and they are going to do it in Southeast Asia."

So, Japan is changing. Their unemployment is going up. Their lifetime employment situation is beginning to break down. The whole system itself, the tradition of suppliers, is being challenged and changed.

I just want to praise you for the work you have done. I do not think it is perfect. You did not come up properly in my judgment on startup variable costs, fair comparison, but as you say you cannot win them all.

And on my list there were 13 things that I really cared about for a State which had lost 10 percent of its population for each of the last two decades, and you came up with a winning hit on 11 of those 13. And as a representative of the State of West Virginia I do not know how I can do anything but support, as I do, what you have done in GATT.

So, I want to commend you for that. And I want to ask you to repeat, because this is brought up constantly and I am actually sort of saying this not so much for the members of the committee but those people who might be listening to this or watching this hearing, when this question of American sovereignty is brought up, as it is time and time and time and time again, you have answered that very, very clearly, but I would like to hear your answer once again.

Ambassador KANTOR. Thank you, Senator. When I attempted to play baseball I never, never, never in any series went 11 for 13, so I appreciate that. I have at 55 years old accomplished something I never did at 18 years old.

Let me start with No. 1. Section 102 of the bill makes it very clear that "no provision of any Uruguay Round agreements, nor the application of any such provision to any person or circumstance that is inconsistent with any law of the United States shall have effect." That is first.

Second, "no substantive right or obligation of the United States of America can be altered or changed without our consent under this agreement."

No. 3—we put in this law that "every 5 years the Congress of the United States can review the WTO and its workings, and by a vote of each body, a majority vote of each body, could in fact pass legislation to withdraw from this organization."

No. 4—"no ruling by a dispute settlement panel will force either the Congress of the United States, and State legislature, any city council, any body in this country to change any law." That is up to us.

I cannot imagine how we could have protected our sovereignty more than we have under this agreement.

Let me say one other thing. The chairman and I disagree to some extent on this, but to put in the first sentence of article IX of this agreement that this organization operates by consensus and the fact that they cannot change any substantive right or obligation of our country, and the fact they cannot change any law, and the fact we can maintain more stringent standards in environmental and conservation matters concerning human, animal, or plant life should give every American the confidence not only that we have protected our sovereignty, but it is much more protective the day that we implement it here in this country and it goes into effect, than it has been for 47 years in Geneva.

Yet, those agreements along with IMF and the World Bank, at the end of World War II, ushered in the greatest expansion of an economy in the history of humankind.

So, Senator, first I appreciate your overly kind remarks, No. 2, and your support for this. No. 3, I think you are right.

Let me make one other comment, and I am sorry, but it raised one other issue that is critical. We have got to preserve our trade

laws, and that is what you are talking about. We did not give those up with section 301, title VII, or our antidumping laws. We must preserve them.

This country should never give up its right or obligation to enforce its trade laws to make sure that we are all playing by the same rules.

We have just operated under that, as you know, this weekend with Japan. We have made some strides forward. As I said, we did not solve all our problems with Japan this weekend. That is going to be a long-term concern.

But this administration is going to work with both sides of the aisle. We are going to enforce our trade laws. We are going to address these problems. We have done it with title VII, we have done it with special 301, we have done it with China, we have done it with Japan, we have done it with Europe, and we will continue to do it because it is in the best interest of American workers.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Danforth.

OPENING STATEMENT OF SENATOR DANFORTH

Senator DANFORTH. Mr. Ambassador, the Uruguay Round has been described as the largest worldwide tax cut in history. Is that correct?

Ambassador KANTOR. Yes, sir.

Senator DANFORTH. Could you very briefly tell us what that means?

Ambassador KANTOR. By lowering tariffs around the globe, by an average of 40 percent, and as you know so well, Senator, given your long history in trade, tariffs in other countries around the world except for maybe Singapore and Hong Kong are much higher than ours, we are cutting the price that consumers are going to have to pay in those countries for goods that are exported into those countries, therefore it acts as a tax cut. It is \$754 billion over the next 10 years. \$36 billion to American consumers. So, it acts as a major and significant tax cut.

Senator DANFORTH. So, American consumers will be paying \$36 billion less in Federal taxes as a result of this?

Ambassador KANTOR. Not in Federal taxes, in the cost of goods. It acts as a tax cut because of paying less for the goods.

Now, what is interesting because of the economic stimulus this will create, every study has shown we will collect about \$3 in Federal revenue for every \$1 in our tariff cuts, so we have got the best of all worlds—lower prices for consumers or a tax cut for consumers, more money for the Federal Treasury, and more exports going overseas. I think that is a good deal by anyone's estimate.

Senator DANFORTH. A lot of emphasis has been placed on how are we going to pay for this with respect to the budget. But I take what you have said is that any dynamic analysis of what this will do for the Federal budget means that it will improve the situation with respect to the deficit, rather than make matters worse.

Ambassador KANTOR. Absolutely. As you know, under the 1990 budget agreement we have a static model, not a dynamic model. Therefore, any time you in this case lower tariffs you must find the money to pay for it.

I would like to point out in the very delicately negotiated pay-go agreement between the administration and the Congress, both sides, both parties. Sixty-five percent of the payment for the implementing legislation, so to speak, for the tariff cuts—and, again, this is based on a static model—are in cuts, not in any kind of revenue raises—35 percent are in compliance or timing devices.

I think it was a delicately reached agreement done very well by both administration and this Congress, by Republicans and Democrats, in addressing a very difficult problem which is how do you use a static model when you are talking about a dynamic agreement.

Senator DANFORTH. Now, the tariffs by other countries on exports from the United States to those countries will be cut by over one-third. What does this mean for U.S. employment?

Ambassador KANTOR. Growth, higher wages, higher standard of living, grow more high-skilled jobs. We have been frustrated continually over the years by tariff and nontariff barriers, whether it is agriculture or our manufacturing sector. As we are the most productive and competitive country in the world now today by everyone's estimate, including international organizations, this is in our interest to get these barriers down to get our goods in.

Senator DANFORTH. You do not think this is going to be a sucking sound? Do you think this will create more jobs in the United States?

Ambassador KANTOR. Absolutely.

Senator DANFORTH. Some say that it would create between 300,000 and 700,000 new jobs by the year 2004. Is that pretty close to the mark; do you think?

Ambassador KANTOR. Well, that is an estimate by the Treasury. What is interesting is that is based on a relatively limited model of the Uruguay Round. They do not take into account intellectual property rights, protection, the services agreement, or the agriculture agreement. It is fascinating. All we are talking about is the manufacturing sector alone. So, of course, it will be higher than that.

Others have estimated higher, but that is a reasonable and conservative estimate.

Senator DANFORTH. Now, if we were to delay implementation of GATT for, say, 6 months would that have negative effect on the United States?

Ambassador KANTOR. Yes, sir. The Treasury Department has done a study and Secretary Bentsen has indicated it would cost us over 10 years \$70 billion in economic growth.

Senator DANFORTH. You have said you play tennis with the chairman. I take it you do not mind playing a little softball with me. [Laughter.]

Ambassador KANTOR. No, I enjoy this, and the chairman always beat me, though, Senator.

Senator DANFORTH. How about agriculture, Mr. Ambassador? Of course we wanted more reduction in subsidies of agriculture by the rest of the world. That has been a longstanding problem of the United States; has it not, this foreign agricultural subsidies?

Ambassador KANTOR. It has been frustrating. When you are as competitive as our agricultural sector what you want to do is open markets.

The Europeans have been our greatest competitor and the greatest subsidizer. They have to cut their internal supports by 20 percent. We do not have to cut at all. They have to cut their external or export subsidies by 21 percent over 6 years, as we do.

We have backloaded, by the way, that agreement under what we call Blair House 2, which helps our agricultural industry, and the fact is this will be extremely helpful. Let me just indicate, just yesterday almost every commodity group in the United States came out for the Uruguay Round agreement.

Senator DANFORTH. I have got my yellow light on, so let me just ask you one question. There has been a lot in the press within the last few days on the pioneer preference issue. This is really not a trade issue but it has emerged as a way of paying for this agreement, and various telephone companies have taken out full-page ads in the Washington Post attacking it.

My understanding was that there was a competition for licensing of this PCS system, and that the winner of the competition was to get a pioneer preference. I mean, that was the reward.

Ambassador KANTOR. Exactly.

Senator DANFORTH. However, after the fact people started criticizing that. So, then it was worked out with the winners, well, instead of getting the free license, you will have to pay for it, substantial amounts of money you will have to pay. Now that, in turn, is being criticized.

But could you give us a little explanation of this because my own view is that the telephone companies, having lost the contest but having won in the telecommunications legislation, are now feeling their oats again and are desirous of having Congress jump through their hoops again. Could you explain this whole thing? Is this some sort of unfair thing or ripoff that we are asked to be part of?

Ambassador KANTOR. Just the opposite. This is in the best interest of the American taxpayer.

You are absolutely correct. The Pioneer Preference Program was developed in the prior administration, but I think correctly so, to enhance innovation and to induce companies who won these preferences to take big risks, spend millions and millions of dollars in new technology in the hopes that we can continue to be the world's leader in that area.

Three companies won that. One of the companies that is complaining most did not win. I am not criticizing them. They did not win. These licenses were supposed to be for free at that point.

There was a lawsuit and there was concern about that lawsuit, and in addition in the other body, on a bipartisan basis, Mr. Moorhead and Chairman Dingell indicated it might be helpful if these companies who won paid for this spectrum or channels rather than getting them for free.

Now, there are different estimates as to how much will be paid. The formula is very complicated. OMB estimates they will pay up to \$1.1 to \$1.2 billion. CBO estimates about \$540 or \$550 million. But whatever estimate you want to come up with, we are paying for something now that was free.

Those who are complaining now, the company complaining now frankly was a company that lost, tried to buy a company that won and was unable to do so, and now in order to compete in their own area of the country for another valuable license, the personal communications system license which you are very familiar with, Mr. Chairman, Senator, what they have done is they have said they want to have these companies pay more because they know they only have one chance of a license there and they are going to have to pay more for spectrum.

Frankly, the Congress had made the decision that everyone ought to pay for spectrum or channels. That is the only fair way to do it. Now these companies which have pioneer preference licenses will pay. I think that is fair. I think what has been done here is in the best interest of the U.S. taxpayer and, frankly, in the best interest of continuing this innovation in the communications area.

The CHAIRMAN. Very good. Thank you. Senator Pressler.

OPENING STATEMENT OF SENATOR PRESSLER

Senator PRESSLER. Ambassador Kantor, does the administration support Alice Rivlin's letter of August 8, 1994 wherein she stated that, regarding the budget waiver, we do not believe it is necessary to sacrifice budget discipline to pass GATT or in the Congress? And, in fact, it appears that the administration is backing away from her letter.

I was one of 18 Senators who wrote to her and she wrote a letter back on August 8 saying, "we fear that if Congress were to reverse the progress that has been made over these last years"—and so forth.

But it seemed that when the enabling legislation appeared last week it included just \$12 billion in offsets. And somebody over there said, "Well, we expect this to yield so much in the future. That may be speculation but that is not the law."

Do you stand by the August 8 letter of Alice Rivlin? And let me say that I think the members who wrote that letter consider that budget waiver very, very serious business.

Ambassador KANTOR. The August 8 letter, of course, was referring to the first 5 years under pay-go, not the 10 years. As you know, each body has a different rule. The House has a 5-year rule. The Senate has a 10-year rule.

Ms. Rivlin's letter is quite clear. What we are talking about is paying for the first 5 years, and we will seek a budget waiver over here for the second 5 years.

And the administration position has been absolutely, frankly, Senator, clear, precise, and has not been altered since day one of this discussion.

Senator PRESSLER. But the total offsets scored by CBO add up to \$7.8 billion from 1995 to 1999, which is \$1.6 billion short of financing GATT over the first 5 years.

Ambassador KANTOR. No, sir, that is not true. If you take the pay-go savings and other savings—well, we have met the requirements. In fact Republicans and Democrats agree on both sides, the Ways and Means and Finance Committee by a 35-to-3 vote in Ways

and Means, 19 to 0 in Finance Committee—we have met our obligations in the first 5 years of pay-go.

Senator PRESSLER. I have this from the Senate Budget Committee that disagrees. I think we will have to get something in writing.

Can I give you these figures from the Senate Budget Committee, because I want to distribute a letter to the Senators who wrote that letter, because I feel that the administration is backing away from her August 8 letter?

Ambassador KANTOR. In fact, Senator, I will read to you if you would like, or we can put it in the record, but will be glad to answer. Obviously, we would respond directly and completely to any inquiry you have.

I have in front of me the numbers of areas which add up to the amount of money needed for the first 5 years to offset the static concept under the 1990 budget agreement known as pay-go.

Senator PRESSLER. OK. Let me pursue this by giving you two or three written questions, and you can respond to them.

Ambassador KANTOR. We would be happy to respond.

Senator PRESSLER. Let me go on to the method of financing. I must say that the Washington Post is getting rich from full-page ads on this issue, if not from their subsidiary.

But in any event this business of pioneer preference and so forth, and paying for these by—tell me, why did the administration turn to the pioneers who developed PCS for these funds?

Ambassador KANTOR. Because it was in the best interest of the U.S. taxpayer. The fact is that given the lawsuit and the lack of certainty these companies believed, and so did bipartisan members, Republicans and Democrats, that they should pay for these licenses even though they received them, as you know, Senator, so well, on a basis they would not pay.

It will create from 540 million to over 1 billion dollars' worth of revenue to the Federal Government. I think that is substantial and in the best interest of the American public.

Senator PRESSLER. Now, as I understand the FCC's Pioneer Preference Program, innovators of new technologies, the pioneers, would be rewarded by assurances of receiving licenses to deploy the technologies they had developed. Because a spectrum is a scarce resource, the promise of license was designed to stimulate investment in the development of new telecommunications technologies. This is what the FCC determined the pioneers have done.

Last year, Congress gave the FCC the authority to use auctions to grant spectrum licenses. Initially the FCC determined that because the pioneers would not participate in the auctions they would not have to pay for the licenses. Recently, the FCC determined the pioneers would have to pay.

Now, I might ask for your comment on that, and I would like to know what discussions you have had with Reed Hundt about the wisdom of addressing this issue in the context of GATT.

Ambassador KANTOR. No. 1, I have never discussed that with Mr. Hunt at all; No. 2, this started in Chairman Dingell's committee with the support of Mr. Moorhead; No. 3, the FCC attempted to alter their policy, as you know, and did not have the legislative authority, and that was the genesis of this whole debate. All we have done here is say if we are going to, of course, collect revenue, we

were not going to collect for the American taxpayer, it should be used, and I think there was agreement on both sides of the aisle, to offset the cut in tariffs as a result of the Uruguay Round, which of course creates on a dynamic model \$3 for every \$1 in tariff cuts. We cannot count that under the 1990 budget agreement, as you know so well.

Senator PRESSLER. OK, now I understand the FCC's proposals would have required the pioneers to pay 90 percent of the market value of the licenses. Some analysts predict that the three pioneers' licenses would be worth \$2 billion. The GATT bill requires the pioneers to pay 85 percent. This does not sound like much of a difference, although I understand it is figured on a somewhat different formula. The bill guarantees the Government at least \$400 million; the Congressional Budget Office estimates the pioneers would pay \$530 million. How did the administration decide how much it would settle for?

Ambassador KANTOR. We did not decide how much we would settle for. We estimated, based upon the formula developed in the Congress, in OMB, over \$1 billion. CBO was a lower estimate, of course, and for the pay-go we are going with a lower estimate as we are bound to do. So, we did not determine anything. It was a formula that was used to make that determination.

Senator PRESSLER. OK. I will submit a couple of additional written questions to you on that. I have one final question. That is at this very moment there are some New England Senators conspiring to pass a Northeast Dairy Compact which would establish a dairy cartel for the New England States where those States could significantly raise subsidies for milk production and keep fluid milk out from other parts of the country. This would be a cartel. It is led by some great Democratic Senators from the Northeast. The compact will be—

Senator ROCKEFELLER. There are those who love cartels.

Senator PRESSLER [continuing]. Will be viewed as an unfair trade barrier by dairy exporting countries. It goes opposite the goals of GATT, and it has been defined as an agreement of GATT. I told your staff I was going to ask you this question yesterday: Is that a violation of GATT?

Ambassador KANTOR. It may even be of some concern in terms of the interstate commerce clause as well as GATT. I have not seen the documents or the so-called compact or understanding. We have not been able to review it. We just heard about it when you raised it with our staff. We would have great concerns about that, Senator.

Senator PRESSLER. Yes. I think it would clearly be a violation of GATT, and I have some additional questions about that.

And I see the red light is on. Thank you very much.

Ambassador KANTOR. Thank you, Senator.

OPENING STATEMENT OF SENATOR INOUE

Senator INOUE [presiding]. Thank you very much, Mr. Ambassador. There is a vote pending at this moment, so I must advise my colleagues here. I have a very simple question: The treaty before us is a result of discussions and negotiations that began in

1986. The committee has had this treaty for less than 10 days. Why the big rush?

Ambassador KANTOR. After 8 years and literally hundreds of hearings, thousands of pages of testimony, maybe thousands of meetings of the staff, I have frankly participated in 23 hearings in the Congress, Senate and House, just in the last year alone, not to speak of what happened last year in 1993, Senator, we have come to a point where the world, 123 nations, have finally agreed after 8 long, arduous years marked by pain and blood and sweat and tears, that we need this agreement in order to enhance global growth and to play by the same rules and to make sure we grow jobs not only in our country but around the world.

Delay would cost us \$70 billion. That was a study done by Secretary Bentson's Treasury Department—that is something we do not want—\$70 billion in economic growth. It would cost even more economic harm around the world. Let me just say psychologically at a time when Europe is just beginning to recover and Japan is just beginning to recover and where others are beginning to grow so fast in Latin America and Asia, and when our expansion is so impressive and continuing, this is not the time to take an agreement that has been thoroughly discussed, thoroughly vetted, completely understood, I think, by just about everyone, and stop it now. It would be not helpful to our expansion, to our growth, to global growth, and to the rest of our allies.

Senator INOUE. An additional month and a half would make that big a difference?

Ambassador KANTOR. Senator, if we wait and do not implement the Uruguay Round by January 1, 1995, what we will be doing is running the risk that others will not ratify, and we are talking about more than a month and a half. Let me explain.

Every economic foreign or trade minister I talk to by phone or in person, every head of state I get to talk to, this is also verified by the President and Secretary Bentsen, the first question they ask is, When is the United States of America going to ratify the Uruguay Round agreement? They are waiting for us. They look to us for leadership. We are the largest trading nation in the world. Three administrations have supported this. The President reengaged these talks in January 1993 and said in 10½ months we are going to finish, and we did. It would be difficult—difficult—to see these other countries moving forward without the United States moving forward first. Now, I believe we have an obligation to continue that leadership. It is in our interest—our interest—to do so, and the interest of our workers.

Senator INOUE. Of the 123 countries, how many have ratified the agreement?

Ambassador KANTOR. I will give you a precise number for the record, Senator.

It is around 40-some odd now. But the major economic powers—European Union, Japan, and others—are waiting, and they are waiting for the United States, and you cannot blame them. If we are not going to ratify this, then they are going to have difficult problems within their own processes, as well, and I think it is incumbent on us to move forward on a bipartisan basis.

Senator INOUE. My last question on the matter of clarification, you indicated that on the matter of sovereignty that any State or this Nation can pass laws that are much stricter than the rest of the world, zero tolerance on carcinogens, as you pointed out. What if this Congress adopted a law, and it is in the realm of possibility, that the United States will not accept products of child labor?

Ambassador KANTOR. The discussion of internationally recognized labor standards, of which that is one, as you are well aware, Senator, has been a discussion that has been going on since 1919 starting with the Treaty of Versailles. Forty-seven years ago when the old ITO—International Trade Organization—the intersection of trade and internationally recognized labor rights was going to be implemented, but of course the ITO never went into existence. In 1953, the Eisenhower administration advocated the intersection of internationally recognized labor rights and trade. That has been sustained by ever administration, Democrat and Republican, since then. The United States of America already enforces our GSP law and forbids the use of child or slave labor under that in the violation of labor rights. And so I think that we would have an argument that we were following that pattern. It might be challenged.

More important, though, would be the continuation of the discussions which we have now fostered in the preparatory committee for the World Trade Organization, for the first time in 47 years that we begin to address internationally recognized labor standards, child labor standards, child labor, slave labor, freedom of association, right to collective bargain, and, of course, conditions of work. That would be critical.

Senator INOUE. From your response, would that mean that we will have to accept products of child labor and slave labor?

Ambassador KANTOR. No, sir.

Senator INOUE. We can stop them at the ports?

Ambassador KANTOR. No, sir. We already in our GSP law and other laws have enforced that, as you know.

Senator INOUE. I know that my time is up, and I thank you very much, Mr. Ambassador.

Ambassador KANTOR. Thank you.

The CHAIRMAN [presiding]. Senator Dorgan.

OPENING STATEMENT OF SENATOR DORGAN

Senator DORGAN. Mr. Chairman, will the Ambassador be staying? Do you know what your plans are?

The CHAIRMAN. Yes, sir. We want to give you and the others—I think a couple of others want to come back. We can just have a second round. We will just keep going.

Senator DORGAN. I want to make a comment to the Ambassador, and then ask three quick questions, and then I must run and cast this vote.

First of all, I think you are the best trade Ambassador we have had for many, many years, and I recognize that is not saying much because I did not think much of the previous two. And so let me go well beyond that and say that I think you are a real bright spot in public service in this town, and that is why I regret so much from time to time when we disagree. I come from a farm State and I kind of think of the global economy as a giant international eco-

nomic cow that feeds at one end and is milked at another end. And when I look at the things like this I wonder who is getting fed and who is getting milked, and that is sort of the framework in which I think the chairman and others are trying to figure out, how does this affect various parts of our economy and who does it affect in the world in certain ways? And I guess I probably view this in an almost impossibly simplistic way.

In a global model I think that the largest corporate producers in the world want to produce where they can access cheap wages, and they want to sell into markets where consumers have money. I think GATT is a facilitator of those hopes, and in the long term I fear that disconnects the stream of income from production that has formed the wealth that is available for consumption. In other words, I think it is a model that disconnects two important elements, the income stream from production represents the income available for consumption.

So, we have a philosophical, I guess, disagreement about how this works. The access to established markets, because those markets were established in a way that required fights over living standards, wages, child labor laws, and so on, the access to that, I think, ought to impose some responsibilities. And my sense is that we are going through a period where we talk about responsibilities of child labor and so on but the fact is we are going to be competing with 1 American versus 80 Chinese, 1 American versus 40 Indians, 1 American versus 20 Filipinos in terms of comparable income. And I think that is very difficult to compete with under these circumstances.

And I would like to ask three questions, given that as a prelude. Lester Thurow sat where you sat one day, and he said "these type of agreements"—he was talking about NAFTA and GATT—"will inevitably mean lower income for low-skilled or low-wage workers in the United States, lower income for low-skilled U.S. workers." What percent of the workers in the United States are classified as low-skilled? Seventy percent. Do you disagree with that?

Ambassador KANTOR. Of course I disagree with that. The whole history of our expansion from the Second World War is exactly the opposite of that, and so I disagree with it. I guess I should do that with some trepidation. I am not an economist. No one has ever accused me as being as bright as Mr. Thurow. But I just think he is wrong. There is no evidence to support that.

Senator DORGAN. Does this agreement not pit unskilled American workers into an arena with other unskilled workers who make one-tenth or one-fortieth the wage, and is it not almost inevitable that one would think the result will be a depressing of the wages of those with lesser skills, even in the industrialized countries?

Ambassador KANTOR. We have no difference. We come to a different conclusion. This is not a theological debate at all. I am not theological or philosophical. Let me just answer your question, because it is—and I will do it very quickly. That is the situation now. People are protecting their markets, locking out our goods, they will not let us compete. We can outcompete anyone in the world because wages are not the only factor in productivity, as you know so well. We are in a position now to take advantage of a single undertaking where everybody plays by the same rules, and let me tell

you what I believe and the President believes and many people believe is going to happen. You may not agree with this.

We will be shipping high-value-added goods made by American workers, raise our skills and our wage rates and our standard of living, to countries who will then build their industries and raise standard of living, grow a middle class, and will become our consumers of the future. If we do not—if we do not do that—and other industrialized nations do not do that, we are going to run out of consumers, going to run out of markets, technology is going to overtake us, we are going to lose jobs because our markets are not expanding.

In fact, you raise the correct problem, and you and I have talked about this, but we come to opposite conclusions. I believe—I believe—the evidence is on our side.

Senator DORGAN. And your position, I think, is that we face, I think you would agree, in the United States in the last decade a real decrease in adjusted income for families. Take away inflation, American families have less income now than a decade ago. Do you agree with that?

Ambassador KANTOR. But without an expansion of exports, which has happened, it would be even worse.

Senator DORGAN. I understand.

Ambassador KANTOR. That is the difference of opinion here.

Senator DORGAN. I understand that point. I am simply saying the base is American families have lost income in the last decade?

Ambassador KANTOR. Sure. That is beginning to turn around, as you know.

Senator DORGAN. You would say that that is because barriers prohibit us from producing and selling into other markets.

Ambassador KANTOR. Exactly.

Senator DORGAN. And I would say that at least part of it is because the producers of the world have decided to engage their production elsewhere, and jobs that used to be ours, good manufacturing jobs, have moved elsewhere. So, we are looking at the same symptom. The symptom is that we have lost income, and it tends to confirm to me what Lester Thurow and other economists say, that if you decide our lower skilled workers in America shall compete with all other lower skilled workers and there is no access charge to our marketplace, then we will inevitably suffer lower wages for lower skilled Americans.

Ambassador KANTOR. Wrong.

Senator DORGAN. And you disagree with that.

Ambassador KANTOR. Education, training, technology, infrastructure, communications, roads, availability of financing, that is where we stand, and that is our challenge, and that is what we have got to do.

Let me just finish. If you believe you are correct and Mr. Thurow is correct, then we ought to change. The definition of "insanity" is doing the same thing over and over again and expecting a different result. What we need to do is change. Play by the same rules, enforce our trade laws, we will open markets and we will grow our standard of living.

Senator DORGAN. Well, I wanted to ask one additional question, and that is what is the responsibility for the entry fee to our mar-

ketplace? Is it that you do not produce with kids? Is it that you do not produce in prison? Is it that you pay a living wage? I would like for you if you could to give me—and I do not have time now—but give me what are the entrance requirements, what are the responsibilities?

Ambassador KANTOR. I can do it real quick. Act with comparability and mutuality of obligation. In other words, if we are going to open our markets to your goods and we are going to sustain your economy, you have got to do the same for ours.

Senator DORGAN. Let me make one final point.

Ambassador KANTOR. Yes, sir.

Senator DORGAN. You have said change is essential. If I put on a blindfold and listen to the words not knowing who the speaker was, I could not tell one whit of difference between trade policy now versus trade policy in 1982, with the exception of your aggressiveness to deal with trade problems on a bilateral basis. And I give you great credit because others would not do that, but I am saying the general philosophy of GATT is one that has prevailed for 10, 12 years out here and I cannot tell a difference. There might be a difference in tone, but not much difference in substance of where this leads us, and that is why I think this is not change. This instead is probably more of the same.

I just really want to engage more on this issue, but I have about 2 minutes to go to the floor and vote, so thank you very much.

The CHAIRMAN. Mr. Ambassador, while we are awaiting the others coming back, there are so many things striking me, and I think it was Mark Twain who said truth is such a precious thing it should be used very sparingly. [Laughter.]

Now, to go right to our leader, President Bill Clinton, he said at the DSCC committee meeting the other night that global trade puts downward pressure on wages in the United States, and there is no question about it. We see it happening every day.

With respect to the matter of revenue loss, you were correct, and the distinguished Senator from Missouri said, and I have got his exact words, "the taxpayers would be paying \$36 billion less in taxes." And Ambassador Kantor corrected that and said "No, less in cost to the consumer." And you get such a distorted thing about a tax cut, but there is no tax cut to this thing. We will cut our tariffs, and that is why we have got a revenue loss, and that is why it is a budget buster, and incidentally, that is one of the big reasons they put off the vote in the House, I understand, until Friday. The railroad is being slowed, and they are beginning to watch, and they are beginning to understand all those commitments they made about a balanced budget, and here they are being asked to vote to bust the budget \$31 billion. And that is a revenue loss, and it is not any taxes involved as the cause.

And as the next witness, Sir James Goldsmith said, when Nike moved its manufacturing from United States to Asia shoe prices did not drop, profit margins rose. Now, your friend and mine Evelyn DuBrow filled up my office with clothes. It looked like a rummage sale. I have got skirts, shirts, braziers, everything, several of them made in one country, some in India—and identical clothes made in the United States—showing that they are either the same

price, the price did not drop, but the profit increased, or it is even a bigger price on the imported articles.

So, we are going to have a hearing on that to correct the impression around here that they got the biggest tax cut in history. I am intimately involved with the textiles, again by hard experience. In 1982 I introduced a textile bill that was later vetoed by President Reagan. At that particular time in the debate we showed that the Europeans had a \$4 billion deficit in the balance of textile trade, and the United States had a \$4 billion deficit in the balance of textile trade.

But for failure of the United States not enforcing the multifiber arrangement, which you are helping some with the rules of origin, and I commend you for it, but by the failure of them not to use their dumping laws, our \$4 billion deficit has gone to \$31 billion deficit in the balance of textile trade. The Europeans' deficit has gone down to less than \$1 billion. They know how to play the game, enforce the laws. I have been begging for this, and theirs has gone down to less than \$1 billion, ours has gone up to \$31 billion, one-third of our overall trade deficit, with automobiles over one-half, of course, about two-thirds.

And what did we have? We have Auggie Tantillo. I saw him in the audience earlier. He was with the Commerce Department, and he made the import penetration studies at Commerce. And then a woman at the conference board, and separately by a consultant to USTR—I am not trying to involve her, but I happen to know—took it to conference board and factored these into the loss of jobs. This was under Carla Hills. And we found out we were going to lose 1,300,000 textile jobs under the Uruguay Round. And we tried to get the study released to the public and tried to get the study, but I could not get your study out of your office.

Ambassador KANTOR. Mr. Chairman.

The CHAIRMAN. Now, wait a minute. Now, we then paid the Wharton School of Economics to make a study, and they found also there was going to be 1 million jobs lost.

Now, in order to get the votes to pass NAFTA you pledged in a letter, to give us a 15-year phaseout of the multifiber arrangement. You gave them the 10 years, and all the studies say we are going to lose over 1 million textile jobs. So, do not tell me that these will be happy days for textiles.

Stock market: When we announced our opposition to the Uruguay Round and that we were going to hold up on this bill, then the next day the stock market went up 14 points. The reason I raise that is you all are grabbing at all kind of straws trying to intimate that the stock market went down yesterday on account of this GATT debate. On my TV, and I heard several programs, the reason was inflation. And yes, another subject that I would like to talk more about is the deficit, and we can talk about that because in a sense you and I are in *pari delicto*. You think you are in charge of trade, and I think as chairman I am in charge of commerce.

Actually, the Finance Committee is in charge of commerce, and Secretary Lloyd Benton is in charge of trade. Why? Because as Felix Rohatyn testified last week before the Finance Committee, we depend on the Japanese for the purchasing of one-third of our fi-

nancial instruments. Yes, we brought the deficit down, but with the Eastern Europeans coming into the capitalistic market, with the Chinese coming in, there is a great, great, greater demand for capital, so that \$270 billion rather than \$370 billion deficit is noteworthy in one context, but in the sense of capital and the need thereof we are in still deep trouble.

And so you go to bring the pressure. And here Ambassador Kantor is in there with the Japanese saying "We are going to get you, you better agree by Friday night at midnight, we are going to get you with 301," and the Secretary of Treasury reads the Tom Friedman article in the New York Times and says to the Japanese "Do not worry, do not worry, do not worry, nothing is going to happen, not any real retaliation, do not worry," and everything else. So, you are doing a wonderful job under the pressures of trying to go in two different directions at the same time with the administration.

You keep saying nothing will change without our consent. And for Senator Rockefeller you read it again. Nothing without our consent. This is what we are debating, our consent. And under that consent you say you cannot force Congress to change any law when they violate GATT. No, we do not change any law. They cannot force us to, you are right. But they can bring, then, retaliation in the form of trade sanctions, and also cross-sector retaliation. And like you were talking about financial services with the Japanese, they can come back and retaliate on automobiles, which has nothing to do with financial services.

So, do not act like, well, Congress is in power, Congress is in control. When we see what is going to happen to us and they can cross-sector retaliate against us—I am waiting on Senator Burns. He said he is coming right back.

Senator BURNS. I am here.

The CHAIRMAN. Here is Senator Burns, because we have got several others to move along and another very important witness. Excuse me. Senator Burns.

Ambassador KANTOR. Mr. Chairman, if I could just make five very quick comments.

The CHAIRMAN. By all means.

Ambassador KANTOR. And I apologize, and Senator Burns, I apologize.

The CHAIRMAN. No, that is all right.

Ambassador KANTOR. And Senator Burns, I apologize.

The CHAIRMAN. No, that is all right. You should respond.

Ambassador KANTOR. One, this tariff cut will result in a net revenue gain for the U.S. Treasury \$3 in gain for every \$1 in loss. Every study shows it.

No. 2: There was no study ever done by USTR. That study was done by an exemployee of USTR in private life between the time this employee under the previous administration left that administration and then came back. For a few months, this employee was in another occupation working for a private company, and if I had the study, Mr. Chairman, I would hand it to you today.

No. 3: There are only 1.6 million people employed in the textile and apparel industry in this entire United States. Production is up,

exports are up higher than imports, the fact is we are competing and winning in the world economy right now.

No. 4—

The CHAIRMAN. That is why Milliken is going to China and Greenwood Mills in my State is going to Pakistan. Look, I am talking from hard experience. We know what we are talking about. They are not up. We used to have 4 million textile jobs. Go ahead.

Ambassador KANTOR. No. 4: In our letter during the NAFTA we said we would make every effort, and frankly I met for hours with the textile industry in Geneva to get 15 years. But I will tell you what we did get. The previous administration wanted to cut textile tariffs, as you know, by 50 percent. The cuts amounted, when we finished, at 11 percent. We only got 10 years in the MFA phaseout, not 15. Frankly, I regret that, Mr. Chairman. I worked as hard as I could. Sometimes in this life there are tradeoffs that you have to be involved in.

And last, on cross-sector retaliation, that is in our interest. We have the largest intellectual property industry in the world. In our copyright industries alone—movies, music, authors, and so on—we have 5 million Americans employed. We cannot retaliate when we are being abused in other countries under present law because there is not big enough industries in those sectors in other countries. With cross retaliation, we can make these laws and these obligations we have talked about here stick.

Thank you very much, sir.

The CHAIRMAN. Thank you. Senator Burns.

OPENING STATEMENT OF SENATOR BURNS

Senator BURNS. Well, thank you very much. Mr. Ambassador, welcome, and you will be about 10 pounds lighter when you go to lunch today.

Ambassador KANTOR. I can hardly afford to lose 10 more pounds, Senator. [Laughter.]

Senator BURNS. I would say this, and I still have a lot of questions about what we negotiated with Canada and going back to the old Canadian Free Trade Agreement, and we have got to get that ironed out, and I wish we could get that done just to quiet the fears. I live on a border. I do not worry about tariffs and tariff barriers, I worry about nontariff barriers. Now, let me make a case in point.

It takes 6 hours to clear feeder cattle or fat cattle to come from Canada to the United States. It takes 30 days to send feeder cattle to Canada. Now, that is a nontariff barrier. When our trucks pull up to Canada, taking American goods into Canada, now we have come up with a little regulation that their tractors, or the semis, the trucks that are on the front of these trailers, the wheelbase cannot be over 244 inches long. I do not know what that has got to do with it, but nonetheless, that holds them up so you had better get a tractor out of Canada down here to hook on that trailer and get it up there. Nontariff barriers.

Now, we hear a lot about winners and losers, and I am sorry that when we talk about it we spend a lot of time talking about winners because everybody likes to talk about winners. And I am kind of like a guy that when you get into that idea that a piano player in

a marching band "ain't" going to make it. He is not going to be a winner. There has to be some losers.

Who loses?

Ambassador KANTOR. Interesting question, Senator. What is interesting about that, you assume this is a zero-sum game. In other words, everything that has a winner has to have a loser.

Senator BURNS. Well, I am saying—

Ambassador KANTOR. I understand your question. First of all, let me say I could not agree with you more on nontariff barriers. And you and I have talked about this. And what we did on wheat with Canada and the agreement that we have now, at least for 1 year, and hopefully we are going to resolve that problem, is just one way of approaching a problem where we were being hammered by the Canadians because of their Wheat Board. And we worked together on that, and I think we came up, at least preliminarily and temporarily, a solution that works. Now, we have got a lot of work ahead of us to make that permanent.

No. 2: We have got to address these nontariff barriers, whether it is with Canada or anyone else, and you are absolutely correct. I could not agree with you more.

No. 3: Is everyone going to win at the same rate under this agreement? Of course not. Of course not. But is the country going to win? Do we all win when we grow jobs and raise standard of living and create more high-skill high-wage jobs and create 192,000 more people in agriculture employed because of this agreement, create \$8.7 billion more in income to agriculture by the year 2005? Of course we are. Does wheat gain as much as corn? Does dairy gain as much as pork? The fact is no. But do we all go up together? The answer is yes. And so when you look for losers, the losers would be if we do not ratify this, implement this legislation, go forward and grow our economy, we all lose in that situation.

Senator BURNS. Well, I am just wondering how I go home and tell my farmers that they are going to be winners when they are selling their wheat today at the same level as they sold it in 1948. When is this country going to listen to that? We cannot do that, and we just cannot do that anymore without this exodus from the rural areas to the cities that puts pressure on our social fabric as far as our cities are concerned. I do not know how to level that, Mr. Ambassador.

Ambassador KANTOR. I agree with you. I think this is important. We have no disagreement. Let me say two or three things about that. No. 1, this administration has committed itself, as you know, just 2 days ago or 3 days ago to putting \$600 million more into Greenbox programs and refocusing our EEP program into promotion and expansion, not just to take care of unfair trade practice. I think that is a major change. And No. 3, we have committed ourselves to hold the agricultural budget steady in the next 2 years. That is also a major commitment by this administration. No. 4, with minimum access, current access, tariffication, which gets rid of the nontariff barriers in this agreement which you are talking about, with making sure that we lower export subsidies which the Europeans by volume must reduce much more than the United States, we are helping agriculture in this country.

Now, you raised the right question: Does one get as much as the other? Look, there are always going to be some differences in commodity group. But if you had seen the press conference I saw yesterday, was privileged to take part in, where almost every commodity group in this country stood up and said we need the Uruguay Round, I think you would have been as impressed as I was of the almost unanimous support in the country of the agricultural sector for this agreement.

Senator BURNS. Well, I am in complete agreement with you, and I am probably a free trader, but I think the majority of people in production agriculture would like to get their paycheck at the marketplace rather than from a government, or anything with subsidies or EEP's or anything else. Because the EEP, the only thing that does is kind of help out the exporting companies.

We have a difference in how we market. Here, individual producers market their crop. They have to take on the Canadian Government, so to speak, and we have to take on the European Economic Community, so to speak, but we are still pretty individualists out here because we have to market our crops. But we have got also things like futures and future contracts and this type of thing to sort of hedge into that. But it has not helped farm income. And if you think farm income is any better at \$35 hogs and \$3 wheat, with all the expenses, then I have got to give you a lesson in economics as far as agriculture is concerned.

Now, I want to ask, Mr. Chairman, one other question, and I thank you for that. I happen to believe there are going to be some losers. I am just like you in this thing, I have not really identified who they are yet, but I have a hunch. Mr. Chairman, I think with regard to the personal communications, I would like to hear from Mr. Hundt at the FCC before this committee with regard to this agreement. And I think we should ask him some questions about that area because it seems to me there is quite an area of concern and disagreement with regard to that part of this agreement. And so I appreciate that.

And I appreciate Ambassador Kantor. We have worked together on a lot of things, and we look forward to working with you again on some things.

Ambassador KANTOR. Thank you, Senator. You said something implied. I do not know, I think free trade protectionism is a sterile debate. I hope that this President, this Trade Representative, this Congress on both sides, we are smart traders, not free traders or protectionists.

Senator BURNS. Every now and again we do not play from the same rulebook. And that is where we have to get to.

Ambassador KANTOR. You are absolutely correct.

The CHAIRMAN. Ambassador Kantor, the committee is indebted to you. We are going to leave the record open. There were several Senators who had some questions, but we have only got an equal amount of time or less for another important witness. We do appreciate your appearance here this morning.

The record is open for anything you wish to add or any questions by other members.

[The information referred to may be found in the committee files.]

Ambassador KANTOR. Thank you, Mr. Chairman. Thank you very much. And to all the members of the committee, thank you for your kindnesses and courtesy.

The CHAIRMAN. Thank you very much, sir.

Sir James Goldsmith, please.

The committee is privileged to have a world citizen. Sir James Goldsmith fought in the British Army. He is a citizen of the United Kingdom and a citizen of France. Presently he is a member of the European Parliament and president of the parliamentary group, L'Europe des Nations, and a member of the parliamentary committee concerned with global trade and the committee on external economic relations.

I was moved by a conference that I attended with Sir James. And I am reminded what Robert Hutchins said of education. He said that the purpose of education was to unsettle the minds of youth and inflame their intellects. I hope you can do that with Senators, Sir James. You are welcome here before the committee. We would be delighted to hear from you at this time.

STATEMENT OF SIR JAMES GOLDSMITH, MEMBER, EUROPEAN PARLIAMENT

Sir GOLDSMITH. Thank you, Mr. Chairman.

Mr. Chairman, if I may, I would respond to some of the points raised by Ambassador Kantor.

The CHAIRMAN. Would you move that microphone directly in front of you, sir.

Sir GOLDSMITH. Is that better, sir?

I would like to respond, if I may, Mr. Chairman, to some of the points raised by Ambassador Kantor. He pointed out that the Uruguay Round started the negotiations 8 years ago. He also said that the economic future of this country, and of the world in fact, depends on being able to compete with the world. Those were his words. He also said that it was necessary to have a level playing field in trade. And those are three points I would like to address.

First, since the Uruguay Round started 8 years ago, the world has changed totally. The Berlin Wall has fallen. Four billion people who previously had been separated from the world economy have joined the world economy—Chinese, Indians, Indochinese, Vietnamese, Indonesians, Bangladeshis—skilled and hardworking people.

On top of that, technology can be transferred instantaneously anywhere on a microchip. And also capital can be transferred anywhere instantaneously, wherever it will earn the highest return.

So, we are facing today a wholly new set of circumstances. Four billion new people who have access to the same technology and the same capital.

I was, by the way, surprised when Ambassador Kantor mentioned the difference—I think it was not to you, sir, but it might have been—mentioned that the workforces in these countries would be able to outcompete us only on wage costs, and not on things such as technology and access to capital.

The reality is capital is moving there very fast, and so is technology.

But in this new world, I would like you to think as to whether or not, in commonsense terms, there is a level playing field. I came from business. I worked in most of these countries long before free trade existed. I am a free trader on a regional basis, and I have always been for free markets and free enterprise.

But I would like you to think about it in straightforward, commonsense terms. Think, Mr. Chairman, of two enterprises: one here in America or in the developed world and one in Vietnam or in the Philippines or in China. And they are both making the same products to be sold in the same markets using the same technology, having access to the same capital.

The only element which distinguishes one from the other is that one can employ 47 able people for the cost of 1 person in the developed world, the United States, or France, from where I come.

Now, forget all the figures and the theories and the macroeconomics. Just think, Mr. Chairman, in terms of straightforward common sense as would be applied by a businessman. Where is that businessman going to establish his plant? Is it going to be in the place where he can employ 47 people for the price of 1, who, on top of that, have no protection and no trade unions, none of the obligations and they do not seek the obligations which exist in other developed countries? Or are they going to establish them in our countries?

The answer is obvious. And that is what is happening.

And so what is the result?

Let us imagine that we are the head of a company, of an enterprise here in the United States or in France. And that corporation has sales say of \$500 million. And it is in a normal form of industry. Now, we have been told all along that labor is not a major factor; that the cost of labor is not important. We have heard over and over again that. The words that were used were, "wages are the not the only factor."

Now, in fact, the reality is that, depending on the developed country, wages, the cost of employment, including social costs, is between 25 and 30 percent of volume in normal companies. That means that if you have a company with \$500 million of sales, Mr. Chairman, and you decide to move your production offshore and just keep your sales and marketing here in the United States, you can save 15 to 20 percent of sales volume and take it straight into profit. That means that you can increase your profits by up to \$100 million just by moving offshore.

So, what are we saying, Mr. Chairman?

We are saying that we are going to bring in a system, an economic system, whereby if an enterprise decides to stay in his home country in the developed world and employ his staff, he is going to be punished by bankruptcy because he cannot compete with imports.

But if he decides to eliminate his own workforce in his own country and move offshore, so as to reimport the products, he is going to be given a huge bonus of up to 20 percent of sales, up to \$100 million per annum.

So, we have this extraordinary economic system where we give a huge reward to the one who leaves and we penalize—indeed, bankrupt—the one who stays.

Now, what is the answer to that?

The people who object to that point of view say that that is nonsense, because the high-technology industries are going to compensate. Well, the first is structurally that cannot be true. Because a high-technology industry, because of its automation, employs only very few people. That is the automatic, architectural, structural result of employing very few people.

So, if they employ very few people, how are they going to employ very many? How can they compensate for the very many who lose their jobs?

And, in any case, as soon as those high-technology companies start employing people, they immediately move offshore. And in the last few weeks there are some examples. And if I may, I will quote them to you.

IBM announced in early August it was moving offshore. And, interestingly, I believe they said that they were moving offshore with a partner, and they were not going to employ directly the employees as IBM employees, so that if they could find even cheaper sources of labor, they would move on there. And if I may, I will come back to that point.

Boeing, an aircraft manufacturer. Hewlett-Packard may move to Malaysia and is thinking of moving to cheaper places. Advanced Micro Devices, these are the people who created Silicon Valley. These are not standard, normal technology companies. These are the high-technology companies.

So, the answer that high-technology companies will compensate, Mr. Chairman, if I may be so brutal, is nonsense, proven by facts, by reality.

Then they come back and they say to you service industries will compensate.

Well, let us look at that, Mr. Chairman. Out there now there are satellites. You can keep in constant communication with offices anywhere in the world. Companies and corporations with large back offices are moving their back offices offshore and keeping in communication through satellites, and reducing costs by 80 or 90 percent.

In Europe, the most staid of companies, Swissair, has moved a large part of its accounts department to Bombay.

So, there is no particular replacement for the movement offshore. And the alternatives that are being proposed—you have two policies—one which we have talked about and you talked about here this morning in your committee, Mr. Chairman, and that is becoming competitive and the other is trying to maintain a social society without reducing wages.

Now, in the United States, in fact, I have the figure. We are talking about reduction of wages. Since 1973—and these are official Government figures—inflation-adjusted figures, the weekly earnings in the United States are down by 19.2 percent. So, by adjusting what you have done before NAFTA and before GATT is to try and compete by reducing the standard of living.

Now, in the good old days, it was thought that the purpose of an economy was to create prosperity, not poverty. Henry Ford wanted to pay his workers high salaries, Mr. Chairman, not low salaries. He was proud of that. They became his customers. All of a sudden,

this is a policy to reduce wages, a policy to impoverish. The same policy is being applied in the United Kingdom, who are proud of the fact that the salaries in the United Kingdom, earnings, are cheaper than elsewhere.

I would be proud, Mr. Chairman, if salaries were higher than elsewhere—if earnings were higher, not lower.

Insofar as France is concerned, let me give you a real-life example, not all this theory we have been hearing, real life. In the last 20 years in France, gross national product has grown by 80 percent. Spectacular. During that period, free trade has been progressively introduced—not GATT, just international free trade under the old rules. The old rules of GATT prior to the Uruguay Round.

And during that period of growth of 80 percent, Mr. Chairman, unemployment has risen from 420,000 people to 5.1 million. That is equivalent to 25 million in the United States.

Now, how can we be going down the right way when, in a period where the economy has grown 80 percent unemployment has grown from 420,000 to 5.1 million? And what has it grown? From a combination of reasons. Obviously automation and productivity is one. But everybody is going to have that. And we are all going to have to live with that. But on top of that, it is factories that have gone offshore—French factories—and reimport the goods in a way which is preparatory to the Uruguay Round.

They have merely said to their labor forces: Goodbye; you are too expensive. You want holidays, you want protection. We can go to Vietnam. We can go to the Philippines. We can get 47 like you, who will work as well, who will seek no protection, and whom we can exploit as we desire.

And that has been the single, biggest factor, Mr. Chairman. And that is what is going to happen throughout the developed world. It is pure common sense.

How can anybody wishing to set up a new factory set it up with the same technology and the same capital, selling the same products to be sold in the same marketplace in a country in which employment costs 47 times more than the other one?

Forget the theory; just straight common sense and the reality of what has happened.

So, when I hear this business about let us become economic, the reality is you have not got time to and you should not want to. Because you can improve—you can become as economic, and more economic, than any other country which is in the similar planet to you in terms of labor. But you cannot become competitive if that means reducing the earnings of your people by 80 to 90 percent. Because you are not going to improve on the other peoples' technology, nor on the other peoples' capital access.

Now, that has got to be madness. The purpose of the economy is to serve society and not the other way around.

Now, the tragedy about all this, Mr. Chairman, is it is going to create deep divisions in society—very deep divisions, indeed. As you were saying, sir, over the last generations, value added—which means when you take raw material and manufacture it into a product, the value that you have added has been split between capital and between labor in a way which has emerged from decades and decades of political and trade union combat.

You fought elections on it. You have had strikes. You have had lockouts. And you have reached a consensus which keeps society together.

Today, 4 billion people, most of whom are unemployed, many of them willing to work for a fraction. The whole of that labor is being added to the supply of labor. You all know the rules of law and supply. You all know what happens if 4 billion people are added. The result is that labor goes down brutally in value. You shatter the distribution, the sharing of the value added between capital and labor. And labor can do nothing about it, even if they organize and organize toughly. Because all that has to be answered is "we are going away."

And insofar as the going away is concerned, I would like to give you some figures which came out in I think it was an OECD report, but I have got the report available if you need it, Mr. Chairman. Transnational corporations today have annual sales of \$4.8 trillion. They account for one-third of global output. Their volume is greater than the total international trade. The largest 100 control one-third of all foreign direct investment—the largest 100.

Now, how do these corporations function, Mr. Chairman?

And I do not blame the chief executives. I blame us for creating a system which forces them to do this. Because the chief executive has to look after his corporation and run it as profitably as he can. Whereas it is our task, Mr. Chairman, to ensure that the structures in which he operates are beneficial for our societies. And so then it is us who are falling down, not the chief executives.

And the chief executives, how do they operate?

They operate by manufacturing everywhere. Like IBM was saying, they are going to one place, but they want the opportunity to move elsewhere. Hewlett-Packard is in Malaysia, but wants to find even cheaper labor.

And they manufacture wherever they like and they sell wherever they like. It is a basic principle of global free trade. They are outside the jurisdiction of the nation of the patria. Their interests today are no longer the interests of the United States. And the old saying that what is good for General Motors is good for the United States is hopelessly out of date. That is no longer the case, because big business has a total conflict of interest—and I can tell you that as a person who has been a big businessman.

But I am a big businessman who believes that there is zero purpose in making a vast amount of quick profit if we are going to end up by destroying the stability of our societies.

Now, I think it was Ambassador Kantor who said, What is the difference between losing jobs in industry and losing jobs in farming?

Well, in losing jobs in industry you have got to constantly deal with innovation. It is not changing the society. But when you move people in from the countryside into the towns, when you move from 20, 30 or 40 percent down to 10 percent, it changes not only the countryside, but the towns. It changes also the need for jobs. It creates unemployment. It creates a lack of stability. So, there is a difference.

Mr. Chairman, I will finish by saying that it is a mistake to judge the health of an economy by the profitability of its largest

corporations. And I am for profitability and I am for large corporations, but the health of an economy has to be judged by the amount of healthy employment it generates, by its genuine prosperity, and also by social stability. And I am absolutely convinced—and that is why, Mr. Chairman, I joined the profession, the vocation, the calling that you all have here, because I feel so strongly about it—that GATT will destroy all of those three things in a way which will profoundly destabilize our societies.

Thank you, Mr. Chairman.

The CHAIRMAN. Sir James, I appreciate your comments very, very much.

Again, the attendant members have not even had questions of the first witness. Let me take my turn at the last go-around.

Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman. And thank you, Sir Goldsmith, for coming over to our Congress to give us the benefit of your thoughts. We may enter an exchange program, and we will accept your advice over here and then we will send Chairman Hollings over to Great Britain and let him testify over there and straighten those people out over there.

Sir GOLDSMITH. We will be very willing, I promise you, sir. He will be very welcome if he comes.

Senator BREAUX. Your basic premise, I think, is concentrated on the promise of GATT making it much more easy for our industries to move where wages are the lowest. Because, indeed, they are a major factor on productivity and profitability and the survival of industries in the world.

Let me give you just two thoughts and then ask you to comment on it.

Look at the automobile industry. Mercedes Benz built a new plant in this country in Alabama. They did not build it in Bangladesh. Nissan has a brand new plant that has been built in this country in Tennessee. They did not build it in India. Toyota has a fine manufacturing plant in Ohio. They did not build it in Malaysia. BMW has just opened a very fine, first-class facility in the chairman's State of South Carolina. They did not build it in Somalia or Rwanda.

The arguments that were made when we debated NAFTA was that because of lower wages, lower health standards, and lower environmental standards that all of our industries were going to move if we removed all trade barriers to that country, to locate, because of profitability. I think that the two things I cite I would like you to comment on. Because with NAFTA, the early indications are to the contrary—that we are increasing our exports to that country, companies are not relocating there despite all those incentives that some would argue is the primary motivation about where a company does business.

Can you give me your thoughts on those two comments I made?

Sir GOLDSMITH. Yes, absolutely, sir. First, I would like to say that GATT is not NAFTA II. I see that it is always described as NAFTA II. NAFTA was a free trade area with your two neighbors, Mexico and Canada, 100 million people. GATT is a free trade area with China, a free trade area with India, a free trade area with Indonesia. Not 100 million people; 4 billion people.

Mexico, Senator, has high labor costs compared to the people who are joining now. They will suffer from the GATT.

Having said that, this is not that we have not yet reached the period, and one must constantly look forward, constantly, and not try and learn always from behind, but look also forward. But let us look at the current. I just wanted to give you some figures. You mentioned motor car companies in Mexico. Well, I will answer what happened.

Between January and May 1994, Mexico shipped 154,000 vehicles across the border to be sold in the United States, while U.S. carmakers shipped only 17,000 vehicles to Mexico.

In 1994—you mentioned the new expansion—Honda announced it would build a new automobile factory in Mexico. Nissan, Volkswagen, Ford, General Motors, and Chrysler are also expanding into Mexican-based production. So, even though NAFTA is trivial, I repeat trivial, compared to GATT, they are absolutely not in the same ball park.

I am afraid that car factories are moving and expanding there.

Senator BREAU. Well, I appreciate your thoughts. I appreciate your strong feelings on this issue, and for you to have come all the way to Washington to express them is appreciated. We have a difference of opinion, obviously, but I appreciate your comments.

Sir GOLDSMITH. Senator, thank you. The reason why I am here is because I believe that we face identical problems. We are part of the same developed world. We have grown together—you perhaps more vigorously, but, nonetheless, together. So, we have similar problems. It is a world problem.

And whereas I would never even consider making a comment on matters which concern U.S. domestic political matters, this is an international cooperative effort which affects us identically. And that is why I felt I could be allowed to come.

Senator BREAU. We appreciate that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Packwood.

Senator PACKWOOD. Mr. Chairman, let me congratulate you on both witnesses today and Mr. Fallows yesterday. There has been some good testimony. Mr. Fallows, yesterday, was not on the identical track you are on, but not far off. He was basically saying that countries have to watch out for their national interest. And if they are going to move all their production elsewhere, they will end up being consumers, and eventually they will consume nothing. They will have no productive capacity.

But then I asked him, "In that case, does that mean we all kind of settle into little protective enclaves and export relatively little and purchase relatively little?" And he almost answered yes to that. He called the United States a trade sink for both the Japan surplus and Asia's surplus. And he said, "If we close off the trade sink, they will have to sell more of their production domestically, to their own consumers. Because they can produce more than they are currently consuming."

Before I go on to the second question, is his theory roughly right?

Sir GOLDSMITH. Senator, no.

Senator PACKWOOD. OK.

Sir GOLDSMITH. Let me explain to you where I stand. And obviously when I say is it right, I am giving you my view.

The North American free trade area, and Mexico in that, is not much more important than the poor areas of Europe are to us, such as Portugal and Greece and Sardinia and Sicily and places of that kind. You cannot have total homogeneity.

These markets in the North American free trade area and the European Market are colossal, Senator. They are the biggest ever known to history, and by a mile.

Now, why do we need big marketplaces? We need big marketplaces so as to create the right amount of competitive pressure. Competition is a tool. It is not a demigod, it is a tool. And it is a tool to force us to be competitive, to force us to innovate, to force us to supply diversity to customers.

The North American free trade market is the biggest market and can supply the most effective and vigorous tool you have ever had of this kind, the same as we can in Europe. So, this is vast. So, how should these great regions—and there are others being formed—there is the Asian free trade area, the six countries in Asia being formed at the moment, there are two Latin American free trade areas being formed at the moment, and they are homogeneous, and they are not going to cause themselves trouble.

How do we deal with them?

First, you have got to ask yourself one or two questions. The first question is: How do we help them develop without destroying ourselves? And the answer to that is keep freedom of movement of capital. Keep freedom of movement of technology.

Senator PACKWOOD. What is the second, after freedom of capital?

Sir GOLDSMITH. Freedom of movement of technology.

And when our corporations, yours in America, ours in Europe, want to go and sell in Latin America in the middle of their free trade area, let them go there, bring their capital, bring their technology, open factories, employ Latin Americans or Asians or whatever particular region you want, and participate as corporate citizens of those countries so it would develop them. And it would develop them without destroying us. Because we would not be hemorrhaging jobs.

And insofar as we are concerned—that is you in the United States and us in Europe—if we had a similar policy, all those people who have moved offshore to supply us with shoes and textiles and furniture and electronics and Boeing aircraft and all the micro devices and the rest, they would have to come straight back to the United States. And they would have to open new factories and they would have to employ Americans. And they would have to participate in every way in the active life.

You would have a great retransfusion of blood, instead of hemorrhaging to death as you are now.

Senator PACKWOOD. Well, let me ask you what you are saying. You are talking about creating eight or nine trading areas of reasonably homogeneous peoples. And you say Europe is one. And the fact that Portugal is one-third of the wages of the Netherlands is not that disabling?

Sir GOLDSMITH. No, I am saying Europe is one. The United States is one.

Senator PACKWOOD. The United States is one.

Sir GOLDSMITH. The North American free trade area.

Senator PACKWOOD. Right. And you can afford the disparity between Portugal and the Netherlands. That is not so great a gap to cause all of the industries in northern Europe to move to Portugal?

Sir GOLDSMITH. No, it is not the gap so much. It is the fact of the size. You can absorb 10 or 20 million.

One of the arguments, Senator, given the whole time is, Why cannot we do to China and India and Vietnam what we did to the Tigers, Taiwan, Singapore, and South Korea? I will tell you why. Size.

Those countries have 75 million inhabitants. And yet, if you analyze the figures, Senator, you will find that we hemorrhaged enormously to make them rich.

Senator PACKWOOD. Given your theory, China could not even afford to be a free trade unit within itself with 1 billion people.

Sir GOLDSMITH. Why do you believe that? Why do you really believe that everybody depends on us?

First, they are bigger enough and they are growing enormously, and they will become a huge indigenous market.

Second, we can go in and invest there and participate and help them in their development with our technology and our capital. And that will become a great big trading region. And we will have helped develop them. We will have benefited from that development. And we will not have bled to death. We will not have lost jobs.

One final point I would like to make on this is that one of the fundamental mistakes that are made by economists is that when they talk about trade they always talk about trade in terms of money. Well, in the case of America, it has got the biggest trade deficit it has ever had, so I do not understand all these points about being more competitive than ever that were made by Ambassador Kantor, because that is the way to measure it, both in terms of trade and capital outflow. They are hideous, both sets of figures, as you know. And we have got nothing to be proud of in Europe either.

But the point is that the way you measure trade is not in money. If we in the West export 1 billion dollars' worth of goods we might have employed less than 1,000 people making it. Because the only things we can export are things which have got minimal amounts of labor. But when we import 1 billion dollars' worth of goods it is completely different. The economists, who only understand figures and do not understand society, will tell you that trade is in balance. We have imported \$1 billion and we have exported \$1 billion.

But the reality is we have exported products which contain the jobs of perhaps 1,000 people. And we have imported products which employ tens of thousands of people to produce.

So, if you look at a social balance of trade, what it is doing on society, on stability in our towns, on the social costs, on the budgetary costs, on how this Nation feels, that balanced trade for the economy is totally destructive for your Nation, sir.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Danforth.

Senator DANFORTH. Thank you, sir. You are very good to be here with us today.

Sir GOLDSMITH. Thank you very much.

Senator DANFORTH. You made a very powerful statement about problems that we are having right now exporting U.S. jobs to the rest of the world. And then you concluded by saying: "And therefore, we should not agree to this GATT agreement."

I did not quite follow the leap there. Most of your testimony was how terrible things are today. And then, somehow, it followed from there that the GATT agreement was a bad agreement.

Sir GOLDSMITH. That is correct. I believe that if you follow the GATT agreement, a free trade area with these countries, you will export jobs to such a degree that you will impoverish and destabilize the United States; and that we will do the same thing in Europe.

I believe that a few corporations—why do you believe, Senator, that—I flew over yesterday, and in the plane I was reading the International Herald Tribune. And there was a little article which was analyzing—it was from the day before yesterday's New York Times—and it was analyzing who was for and who was against this GATT affair in the States. Obviously, as I was coming to visit you here today I read it with interest.

And who was for it? They used the word "monolithic." It was big business. "Monolithic" was their term.

Why?

This is a dream for big business. It is absolutely unlimited access to vast quantities of almost free labor.

Senator DANFORTH. Could I just ask you this?

Sir GOLDSMITH. Yes.

Senator DANFORTH. Right now there is no limitation to the ability of U.S. businesses to locate offshore.

Sir GOLDSMITH. But there is to reimport their products. If you have a situation—and in the old days, when I was in business, Senator, I invested everywhere. And when I invested here or in India or in Latin America or in other countries in Europe, I invested to serve those markets. I did not close a factory in France, ship the work out to Vietnam and reimport the products.

If I invested in India, it was not to reimport the products, it was to serve and develop and conquer, in the good, old-fashioned sense, a market share in India. Today that has changed. Today, because of GATT, they are moving offshore so as to get rid of your labor force, because it is too expensive, and replacing it by a cheap one.

Senator DANFORTH. Of course, that is an argument against the status quo.

Sir GOLDSMITH. No, that is an argument against what is proposed. Either way, I do not much like the status quo. But what you are doing is, when the Ambassador was talking about change, he was saying let us go headlong into an accentuation and an aggravation, an acceleration of the status quo.

Senator DANFORTH. I did not hear that.

Sir GOLDSMITH. Well, that is the way I heard it, because the word "change" kept on coming up. And somebody denied there was change. I think it was you, sir. And I agreed with you.

Senator DANFORTH. Well, can I just ask you this? One of the things this does is to improve, change, the dispute settlement procedures under GATT. Does that lead to an exporting of U.S. jobs?

Sir GOLDSMITH. Senator, there are two different worlds—one of 4 billion people earning 2 or 3 percent of what they are earning here, with vast numbers of unemployed, and there is our world. If you create a global market, it is not by tinkering with the problems. It is not by small disputes that you can bring these two worlds together overnight.

Senator DANFORTH. Sir James, can I just say that we now have a global market?

Sir GOLDSMITH. No, sir. We are moving toward one, and we should move away from one. At the moment, we have a number of different streams of movement. We have regional markets being created—two in Latin America, one in Asia—they are all over the place being created.

Senator DANFORTH. Well, our perception is that the U.S. market is much more open than most markets in the world. There are others that are—maybe Singapore—but, by and large, the U.S. market today is more open.

Sir GOLDSMITH. Then I feel very sorry for you, Senator, and for all Americans. That is why your salaries have dropped 19.3 percent. You are sacrificing their earnings on the altar of a false economic doctrine.

Senator DANFORTH. Well, I understand that. That is your basic testimony, and it is a criticism of the status quo.

Sir GOLDSMITH. That is correct.

Senator DANFORTH. But I do not think you have made the linkage between your objecting to the status quo and why you are against this agreement. Because, right now, we have essentially an open trading system, as far as our country is concerned. And yet we have a situation in other countries where they have relatively high tariffs compared to ours; they have all kinds of methods of keeping U.S. products out; they have widespread subsidies, especially on agriculture; we have no protection for intellectual property; and so on and so forth.

And these are the specific areas that we hope to address in the GATT agreement.

Sir GOLDSMITH. But, Senator, you go way beyond that. If you had an open market, why would you have had NAFTA, if you had the same market before NAFTA? The debate on NAFTA, was that about nothing?

Senator DANFORTH. No. The debate about NAFTA was exactly on this point. The debate about NAFTA was the debate about the disparity between the Mexican market and the U.S. market, where the Mexican tariffs, for example, were many times what ours were, and where the maquiladora program in Mexico is something unlike anything we had in this country. And what we wanted was, as everybody has talked about today, a level playing field.

Right now, U.S. manufacturers can and do export jobs to other countries. They have usually said to us that there are some downsides to doing that, and that is why they have not gone as headlong as they may have in that direction. But, right now, there is no limitation on their doing it.

What there are are various limitations on the United States being able to do business abroad. And we feel that we would be better off solving the problems that are at hand and the problems that are solvable. It seems to me that you are talking about a different problem. You are arguing for, say, a higher tariff rate imposed by the United States on imports or you are arguing for the United States playing the same game that is played by other countries.

But the GATT agreement is basically an attempt to try to create better possibilities for us doing business abroad.

Sir GOLDSMITH. Senator, you just mentioned the maquilladora. You said that was happening in Mexico and it was not happening in the United States.

What does that mean? That means that people could manufacture cheap in Mexico so as to import it to the United States. It was no more than a demonstration of everything that I have been saying.

Second, Ambassador Kantor was here and he was talking about 40 percent reduction and 40 percent reduction in that. On top of that, China was not part of the GATT and we had negotiations going on to bring them in to GATT.

And he was saying to bring their goods in they have to bring them in and change the label. We heard all of that about the labeling.

You have not got a free trade system now, but if you did I would say get out of it. I would say you are committing suicide. You are bleeding to death in jobs and capital.

And what I would say is have a region, be proud of it. Your purpose, the purpose of the economy is to create stability, employment, prosperity, and contentment to the society, it is not to destroy that society to make GNP growth with the result of an increase in unemployment.

So, do not try and improve GATT. GATT is unimprovable. It is on a totally flawed economic premise. Think again.

But one thing I pray you do. This is the sole most important economic act the Western world has ever taken—a free market, not with Mexico and Canada, but with China, Indonesia, the world. It will change the life of every American, every one.

At the moment the debate is just starting by a miracle, as it was in Europe. This single most important act which is going to change everything is going through without a debate. And according to the opinion polls the majority of American people do not even know what it is about.

And all I pray is take the time to think about not just how to improve GATT, but whether there are alternatives to GATT which can create a better, more stable, more prosperous society in America without the problems that unfortunately you and we are living through from unemployment and destabilization in the cities and all the rest, which follow on because they are all part of the same phenomenon.

Senator DANFORTH. Sir James, I have overstayed my time by a lot. I would only say that you have made a very strong presentation for your point of view. You have not drawn the linkage be-

tween your point of view and opposition to GATT in the opinion of this Senator.

Sir GOLDSMITH. Well, if I have not I apologize.

Senator DANFORTH. Thank you very much for being with us.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. And, Sir James, thank you very much for being here. We have not had, at least in the United States, a thoughtful, thorough, interesting discussion about trade policy and what it means to our future. We just have not had it.

And I do not understand why that is the case except maybe that there are a group of people in this country who think in a certain way about trade, and who have adopted the mantra chant of free trade, and you are either with them or you are some sort of isolationist, xenophobic, slow thinker. I mean, those are sort of the two camps that you are in on this.

Senator Danforth made the point, we can now move our production offshore. We certainly can, and it is being done more and more often. That is the point. And my view of GATT is it is the same direction except going from trot to a gallop.

It is the point that I was trying to make to Ambassador Kantor about the fact that I think we already have a model for the effects of where this is heading.

If I blindfold myself and just listen to the words I cannot tell a bit of difference over the last decade of who is talking on trade. They all sound the same—same direction, same chant.

The model, I think, of what this leads to is what we have seen for 60 percent of the American families in the last decade. The 60 percent of the American families with the lowest income in the last decade have not seen better times, they have seen worse times. Those 60 percent of the families suffer now lower income. Why is that?

Well, the television camera that now points into this hearing room, that is a technology that we in America invented. Whoever is watching this is watching on a set that someone outside of America produced. Why? Were we smart enough to invent it but not produce it? No. It is because others in the world are willing to produce it much less expensively than we, and that expense is largely in the issue of labor costs.

And so that is how I get back to the points that you made, Mr. Goldsmith. I feel very strongly that there needs to be some responsibility attached to accessing established markets, because established markets are built with great pain and great anguish and great society debate on many issues over a long period of time. And if you say, "Look, they are here, they are free, access it and do not worry about responsibility," I think you destroy what we have built and what we have for a long while.

So, I guess I would just like to ask you about two points. In this country, and it is probably true in Europe, we are obsessed with measuring economic health by what we consume rather than what we produce, which I think is folly. Ultimately, the success of our country and our way of life is gauged on what we produce. That is the source of long-term wealth.

Do you have that same feeling? And how do they feel about that in the European countries?

Sir GOLDSMITH. I will speak for myself rather than for everybody else, but the whole concept of gross national product, GNP, is a mistake, Senator.

GNP measures activity. It does not measure beneficial or detrimental activity. To give you an idea, it has been testified to in front of this committee and others that such items as cancer, drug abuse, and crime account for nearly 8 percent of GNP. That is not a good measure. And that is why you can have a growing GNP with a diminishing employment base, greater instability in the times, and a general impoverishment of the Nation.

In England over the last 30 years, the figure I gave you for France was 20, GNP went up over 90 percent. And according to the official statistics the number of people who have gone into poverty have gone from 4 to 11 million.

Now, how can you have a system which tells you on the one hand that your economy has nearly doubled and the number of poor has nearly tripled? This is in a country of 56 million inhabitants, Senator.

So, what sort of nonsense is the economic theory on which we are basing ourselves?

I went to the first meeting of this—I do not know if it is confidential or not, but I do not suppose it is. At the first meeting of the Foreign Trade Committee in the European Parliament in Brussels the other day, I listened to three speeches by rapporteur, I do not know if they use the same word here, where they were reporting on work that had been done on the subcommissions, and then a speech from the bench.

And I took the floor after that, and I said I have been absolutely amazed. I said every single one of these speeches has been how to accelerate imports, how to extend imports from China, how to make it more profitable for importers, and why poor importers were not making enough profit.

I said, now why is it—how is it possible that at no time did this committee of parliamentarians representing supposedly Europeans, the interests of European society, why is it at no time did you ask what are the effects on European jobs? What are the effects on European cities and their social stability? What are the effects on the budgets of European nations in terms of unemployment costs? What are the fundamental effects?

You people have only talked about the P&L account, the profit and loss account of importers. I said, if I had woken up in this room I would have thought I would have found myself in a room full of lobbyists for importers.

Senator DORGAN. I had indicated previously my notion of this is a rather simplistic way, which is that we now have in the country a growing set of international economic conglomerates. They are not interested in economic nationalism. They do not say the Pledge of Allegiance. They are interested in providing the fullest rate of return for their stockholders that is possible.

And increasingly, it seems to me, GATT is a facilitator for international economic enterprises to access the lowest possible wage and to sell in the best established market. And I think that is a

disconnection of everything that we understand can make a market and an economy work to help all people in the economy.

Sir GOLDSMITH. That is 100 percent right. I cited those figures earlier of transnational corporations, and I do not blame them. I was head, as I said before, of a large corporation. And as head of a large corporation you are a steward who has to try and create the ongoing life to perpetualize that corporation.

And if the structure is such that if you stay here you go bankrupt you cannot take that risk. You have just got to go. And that is why these people have got to go.

They are not less patriotic or more patriotic. It is society and its representatives who are creating a structure which forces those people to act in a way which is totally negative to the interests of society.

Senator DORGAN. Let me, with the indulgence of the Senator from Texas, make one additional comment. I see my time has expired.

I think your testimony is very persuasive and very powerful, and I hope it begins to stimulate a thoughtful discussion rather than a kind of a thoughtless chanting of things here. In this country we need a national discussion and debate about what this policy ought to be.

I would simply say that not all that is negotiated in GATT is unworthy. The efforts to pry open markets of industrialized countries that are now closed like the Japanese are very worthy goals, and there are some successes in the agreement. Those I support.

But I am concerned about the direction of the philosophy here that accommodates what I think are the international economic interests at the expense of the industrialized nations, and especially at the expense of the working families and the economic health of the working families of those nations.

Mr. Chairman, thank you very much.

The CHAIRMAN. Thank you. Senator Hutchison, I am sorry you missed your chance there with Ambassador Kantor, and the record is open for any questions that you have of him, and we are glad to recognize you.

OPENING STATEMENT OF SENATOR HUTCHISON

Senator HUTCHISON. Thank you, Mr. Chairman. I did have to go and vote, and stayed on the floor a little too long, and did not get to ask my questions of Ambassador Kantor, but I would like to submit those for the record.

My questions on GATT to Ambassador Kantor area not in your field, Sir Goldsmith, but I did want to say that my questions were based on State sovereignty and making sure that our States do continue to have sovereignty, and to determine exactly what the State sovereignty limits were, and also for the funding mechanism that I do question and the issue of why we did not use spending cuts versus tax increases. I just basically do not like the idea of using tax increases to fund tax decreases.

And so I do want to submit those questions to the record for Mr. Kantor.

On the areas that you have brought up, however, I would like to discuss some of your views. I had a very interesting visit from

the CEO of the Miles Corp., and he was talking to me about the effects of NAFTA really in a different view from the traditional view that people have had of NAFTA which was the giant sucking sound.

He had several plants in Mexico and because of NAFTA and because of the easing of restriction of bringing things into the United States as well as exporting from the United States, he is now moving much of his Mexican operation to the United States because the efficiencies, and the safety, and the production are better. So, that is an example, I think, of a different experience perhaps than you have mentioned.

Would you like to comment on that?

Sir GOLDSMITH. Senator, did you say the Miles Corp.?

Senator HUTCHISON. Yes.

Sir GOLDSMITH. The pharmaceutical people? The people who make Alka Seltzer?

Senator HUTCHISON. Yes. They do pharmaceuticals but they also do chemical processing, and they were really talking about the chemical processing part of their operation.

Sir GOLDSMITH. Well, this might be one of the exceptional areas where you have very, very little employment because in the pharmaceutical section, and I used to be in that business, you employ very small numbers of people, so that might be possible.

But to suggest the factories are coming back here, as you know in the first 8 months of 1994 there have been 224 factories moved from the United States to Mexico, and that was in a bad period because Mexico has been going through a tough time, and there were preelectoral problems. So, I think if you look at the overall figures—but forget the examples.

Senator HUTCHISON. Let me just ask you if you would put this in the context of GATT because I think that when you are talking about movement of jobs out of America, the points that he was making, I think, were interesting from the standpoint of the competitiveness which does expand.

Sir GOLDSMITH. If I may just finish on NAFTA, on NAFTA it was a close call because they are your neighbors and you want stability and they are relatively small. It is exactly the equivalent to us of Eastern Europe, if you like, which we are going to have to handle in a different way than if we had handled Indonesia, Bangladesh, India, and China.

Therefore, it is a different problem, a difficult problem that has to be handled, but part of the cost is moving out.

Now, the idea that—one of the fascinating things that we found, and there has been a study that was a senate study on this in France done on this by a senator called Senator Artu, and one of the things that we found was that the new factories, the new plants and equipment in those countries where factories had left France to go and get things manufactured, were more modern than the factories they had left because they were new.

And, therefore, not only did they have cheaper labor, but they actually had state-of-the-art equipment over there. And the people that were working there have a level of productivity which is enormous.

First the idea—obviously they are skilled people, obviously they want to work and need to work, obviously they have not been touched by the facilities that we have had in terms of things that we consider civilized and normal and probably rightly so, all the various social advantages that we have.

So, these people are working hard, they are skilled, they have got good equipment, they have got the capital, the amount of capital. The chairman mentioned Felix Rohatyn, but I read in yesterday's paper that he was forecasting \$300 billion a year would have to go out in direct investments per annum in the short-term future to developed countries. So, it is a real hemorrhage of jobs and people. All that capital will be building new plants.

So, the idea, just in common sense, that a factory with new equipment, new plant, new technology, all the capital, and paying 2 or 3 percent of our costs in terms of labor could not compete with us is just not logical. It is obvious.

I mean, in other words, if we took every economist out of this debate and just brought normal people in and said, "How can you compete to make the same product under those circumstances, with people paid 95 percent less wages and they are skilled people, it is obvious that they must succeed."

Senator HUTCHISON. Let me ask this question. One of the things that has not been mentioned today is that we talk about lower wages but we have not talked about the lower prices that should result from all the things that are happening. Are we taking away more subsidies? Are we taking away the added costs that tariffs provide?

So, if you do in fact have lower salaries could it be that we are offsetting with lower prices, and basically disinflating the world economy?

Sir GOLDSMITH. Senator, that is excellent. I am glad you asked that question because the Ambassador brought up this question. He called it the greatest tax reduction in history, I think, were his words, and that he talked about \$36 billion for the United States.

And the chairman pointed out that it was not, of course, a tax reduction, it was a reduction in the cost of imported goods and that consumers would benefit where the prices of goods were reduced. And there were examples given where they have not been, where profit margins had increased, but on the whole it will reduce prices.

I want you to bear this in mind, Senator. A consumer is not just a consumer. I consumer is a person who works, earns his or her living, pays taxes, lives in a town or is a city dweller, and if you create a situation where you have exported jobs in the scale that we have in Europe because of free trade, what will happen? She will lose her job. If she keeps her job she is going to pay higher taxes. And she is a city dweller and she is going to live in even greater disorder.

And, therefore, if you balance the cost because there is nothing for nothing, the indirect cost with the fact that you can buy goods cheaper, you are buying the goods cheaper at the risk of your job, the stability of your home, the safety of your neighborhood, and the level of your taxation for social welfare.

Senator HUTCHISON. I see your point, but I would just say that if you do take the subsidies and the tariffs out, and all of that sort of in between that is not very productive, then perhaps you are also lowering the number of bureaucrats, lower the cost of government, lowering the cost of money and, therefore, perhaps your taxes go down. Perhaps your whole cost of living goes down.

Sir GOLDSMITH. Senator, yes, you could get into a deflationary situation, but what you are doing is, as you said you are lowering the number of bureaucrats, you are lowering the number of employees, you are lowering the number of people working in factories.

What are you increasing? You are increasing the number of unemployed and the social instability that creates, and the social cost and welfare cost that creates. You cannot just take the accounts by taking in the good without taking in the consequences.

Senator HUTCHISON. Let me just end by saying I know my time is up, and I understand your point, and I think it is a very good one. I would just say that I think we have to put into the equation here competition, and second an overall problem that we have not had a chance to talk about today, and that is in the world sense is technology going to lower the number of jobs anyway, no matter what we did? Would just the fact that we have so much better technology take away jobs that are not replaceable, and if so what are we going to do about that?

Sir GOLDSMITH. Senator, that is you are right. Technology is also a problem, but it is not because you have got pneumonia, you have got to get cancer as well, and what you are doing—you have got one problem, do not add another. It makes it all the more important.

Senator HUTCHISON. Well, if we do not improve our health care system people will die and that will solve the problem. I hope that is not the overall solution. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hutchison. Sir James, let me put these facts out because I have just checked them out. And they keep bringing up NAFTA, and we will have a hearing perhaps on NAFTA. I would like to because the facts are categorical.

One, there have been 224 applications at our Department of Labor from workers at factories that have moved to Mexico. We put in a program in NAFTA, and we said, "Do not worry, if you lose your job we are going to give you economic assistance." And as a result there have been already 224 applications representing over 30,000 jobs gone due to NAFTA.

So, I said, "Well, I know everybody throws around numbers—this thousand and that thousand." Since the enactment of NAFTA, the first 5 months since the enactment, the United States ran the following trade deficits.

Electric machinery, sound and equipment, 127-percent increase of the deficit over the same period in 1993. Optic, photo, medical, and surgical equipment, minus \$241 million, an 87-percent increase in the deficit over the same period in 1993. Vehicles and parts, minus \$218 million, a 30-percent increase of the deficit over the same period in 1993. There has been a sharp drop in net exports to Mexico since NAFTA was enacted.

So, I agree with you, NAFTA is peanuts compared with this world trade agreement here, bringing in China, India, and the entire Pacific Rim which is, incidentally, the growth area, which is incidentally going to add the 2 billion customers coming under capitalism. So, that is where the real opportunity is, and that is where the real challenge is. And we have got totally different economic systems and cannot seem to understand it.

And when you raise the question, as I have, the lack of understanding goes right to the political or the parochial. USA Today asked me to write a column. I wrote a script, but above it they had, twice as long, a column and it was headlined, "South Carolina Senator Stops NAFTA for Local Political Benefit."

Now, I have to say it. I hope it will benefit us if we can stop it because I think it is economic suicide to pass the Uruguay Round, and I know we are going to lose 1 million textile jobs, and a lot of them are going to be gone from South Carolina. And that is the mind set now.

Back in 1961 under President Kennedy, in order to have the President act to restrict imports under the national security provisions you had to have an official finding that the particular article was important to our national security.

And at that time we got the witnesses. We had Under Secretary George Bell representing Secretary Rusk from the State Department. We had the Secretary of Treasury Dillon, Secretary of Labor Goldberg, Secretary of Commerce Hodges, and the Secretary of Agriculture Orville Freeman.

And after a series of hearings the finding was, and it is on the official record and that is how President Kennedy could act, that textiles was the second most important industry to our national security.

You see, again, these people think in terms of money and they do not think in terms of jobs, and they do not think in terms of important jobs. We cannot send our troops down to Haiti in Japanese uniforms.

And, incidentally, they say well, Japan no longer makes textiles. But they have financed everything, as you know, in Thailand and down in Indonesia, and they are all Japanese actors. They have got not only the textiles but all the rest of the sophisticated electronics, high-technology computers, and will be making airplanes in 10 years, and so will China.

It is hard to get through with the pejorative and the categorical labeling that we hear when you are thinking of the world, and particularly the free world, the industrial free world that has brought and preserved freedom, capitalism, the spread of capitalism.

I am trying to do the same thing. I am working for the Boeing Aircraft worker out in Seattle just as hard as I am for the textile worker in Greenville, SC.

I really do appreciate your having stated that you would not dare presume to come to the United States and tell us anything about trade or anything else were it not for us in this soup together. There is no question about it. And they do not seem to understand that.

I like the emphasis, and I think we are going to have to really embellish that, that the economists really do not understand soci-

ety and the costs to our society. We have been tied up here for 3 months this summer on the crime bill. What do they think causes crime?

Exactly like you said, you do not fault the corporate chief executive. Our policy forces him to move production offshore. I have been chastised in the Fortune 500 because I found in that book, "The Work of Nations," by Secretary Reich, that the Fortune 500 had not created a single net new job in a 15-year period.

I thereupon got the Fortune article just recently that said that for the first 6 months of last year they shipped out 225,000 jobs. They have invested \$50 billion offshore. And what is causing it? We are. Our policy forces these results.

And what is the real result? It is not high-technology wages, it is the crime in the inner city.

When I debated NAFTA there were 97,000 garment workers in the Bowery in downtown New York. Those garment workers jobs are gone. In just a few years they will all go to the \$1 per hour wage in Mexico, with no clean air, clean water, and all those other requirements they have in New York.

So, they are looking like they are smart and they want to show that they are intelligent and up and ahead of the curve when they are so far behind the curve on their general duty. The corporate executive does not owe me a duty. He owes the stockholders a duty to make a profit.

But I owe a duty overall to watch my country and learn from experience, and no one has been in the business about attracting industry as long as I have, 40 years. So, I have been working at it and seeing it and understanding.

Now, Jim Fallows gave me authority yesterday, gave me credibility yesterday, because he has written that book, "Looking at the Sun." He studied the Asian economies for 10 years over in the Pacific. You give me character and credibility because you know how to make money.

They say "Hollings, well, heck, he is a politician. He is a textile fellow. He is just trying to get at the mill shift and get the vote, and he could not care less."

You know how to make money, but you know how to stabilize and save a society in this free world.

Incidentally, I want your little booklet that we had printed to be entered in its entirety in the record, "Global Free Trade and GATT" by Sir James Goldsmith. It will be included in the record.

And thank you, thank you, thank you. It has been dynamic. It has been very, very forceful. And maybe you can come again. I know you are willing to come again and help us in this series of hearings an educational process.

You can see right now, I was just astounded when the distinguished Senator from Oregon, he said, "Look I always thought reducing employment was a success." And the other Senator from West Virginia said, "Well, you know, Japan has lost jobs too. Why are we worried?"

And then Ambassador Kantor said, well, "Yes, on the tuna-dolphin case we would have lost \$250,000 had sanctions been imposed against the United States." What is \$250,000 in this trillion dollar economy? We are not trying to save dollars, we are trying to save

dolphins. We are not trying to save dollars, we are trying to save jobs. That is the whole point that you are making and, thereby, save our free world economy and the strength thereof.

Thank you very much. The committee will be in recess subject to the call of the Chair.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

S. 2467, GATT IMPLEMENTING LEGISLATION

THURSDAY, OCTOBER 13, 1994

**U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.**

The committee met, pursuant to notice, at 10:01 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Good morning. The committee will please come to order.

We are pleased this morning to have an outstanding panel of witnesses who will appear together and argue apart. Kevin Kearns, the president of the U.S. Business and Industrial Council; Charles McMillion, the president of MBG Information Services; Michael Lind, the senior editor of Harpers Magazine; and C. Fred Bergsten, the director of the Institute for International Economics.

Mr. McMillion, we will start with you here.

The custom generally is to try to give a 5-minute summary. We are not cutting anybody short because I think we have got time here. If you have prepared statements they will be included in their entirety in the record. If you could summarize that statement for us so each of the panelists then can have an opportunity to agree or disagree, and then we will submit all of the questions. Mr. McMillion.

STATEMENT OF CHARLES McMILLION, PRESIDENT, MBG INFORMATION SERVICES

Mr. McMILLION. Thank you, Mr. Chairman. Let me say that the name of my company is MBG Information Services.

Mr. Chairman and members, I am happy to be here this morning to help you get the record straight on the global forces that now shape U.S. jobs, incomes, and business profitability. The cynicism of the American people is perhaps nowhere more justified than with the steady diet of broken promises and misleading information that they are fed concerning international economic matters.

For some time, the media has been dominated by sucker talk about expanding U.S. exports while they have largely ignored the far larger growth in U.S. imports. This is extremely misleading and tells only about 40 percent of the trade story.

Of course, what matters in trade, as in most other activities, is the full picture, the net effect, exports minus imports.

The U.S. position in international trade has collapsed since the mid-1970's. Our 1994 trade deficit, our net exports, could reach a world record \$160 billion deficit for merchandise.

While some promise that further world trade liberalization might yield a \$1 trillion tax cut, the reality since the last round of trade liberalization in 1979 has been a cumulative U.S. merchandise deficit of \$1.4 trillion, well over \$1 trillion in all goods and services, and almost \$1 trillion just in manufacturing alone.

With NAFTA there has been much hyperbole about U.S.-Mexico trade. The United States does continue to have a trade surplus with Mexico and our exports are growing, but U.S. imports from Mexico are growing faster than exports. So, the U.S. surplus fell by 72 percent from 1992 to 1993.

Since NAFTA went into effect, our surplus has fallen another 51 percent. Since NAFTA the U.S. deficit in electronics trade with Mexico has doubled, to \$1.4 billion just for the year to June 1994.

Despite the export hype from the auto industry since NAFTA the U.S. deficit with Mexico in autos and parts worsened in the first 6 months of 1994 to a deficit of \$1.1 billion.

Again, concerning global trade, while some promise hundreds of thousands of new trade-related U.S. jobs, the reality is no net jobs in internationally traded industries for over 20 years. All of the 44 million net jobs created over the past 20 years have come in nontraded and inflationary service sectors—sectors such as health care, State and local governments, retail trade, building security and maintenance, et cetera.

If the U.S. Commerce Department's estimate is correct that each \$1 billion in net exports equals 20,000 high-wage jobs, this year's \$160 billion deficit alone would eliminate over 3 million such jobs.

California, with its estimated \$21 billion share of this deficit, would lose over 400,000 high-wage jobs, and New York, with a deficit estimated at about \$13 billion would lose about 250,000 jobs.

But, of course, with our flexible labor markets the major effects of these chronic deficits is on income as workers and businesses give up wages and profits to hold on to their jobs and their markets.

While some promise increased prosperity, the reality is that real U.S. income growth has slowed dramatically from more than 4 percent per year 30 years ago to less than 1 percent today. This is even when you include so-called unearned capital gains, rents, and transfer payments, et cetera.

Wages alone that once grew between 3 to 5 percent a year in real terms have plummeted for most Americans over the past 20 years, and even the college educated—their wages have remained stagnant.

This wage stagnation at the top of the educational scale has been almost entirely ignored while attention has focused only on the growing gap in wages and on retraining needs.

Productivity growth has also slowed. Despite the technological revolution, as trade shifts the economy from highly productive, high-wage, traded industries on the one hand to far less productive,

low-wage, services on the other even in our current recovery productivity growth is no better than the post-World War II average.

But even more importantly, the virtual identity that has long existed between productivity and wages has now been shattered as Americans now work harder just to stay in place. Since 1978, productivity has grown by 17 percent while total compensation has grown only 3 percent.

Mr. Chairman and members, the census report last week on income decline—income decline which is unprecedented in the U.S. post-World War II period—tells just about all that anyone needs to know about our economic and political environment. It is still the economy, stupid.

Every category of household and family, as well as individuals of every race, have suffered a drop in real income over the last 4 years.

Mr. Chairman, in your State the drop in income over the past 2 years has been just about \$3,000 per household, \$2,500 per household just last year.

And according to the Census Bureau, the top 20 percent of households, those with more than \$58,000 of income, already have more than two wage earners.

With everyone's income stagnant or declining, is it any surprise that free lunch tax cuts and free lunch additional spending are both so popular?

While some promise enhanced U.S. world leadership and status with further trade liberalization, the reality is that in order to pay for its massive and chronic trade deficits the United States has plunged from being the world's leading creditor and banker by far to the world's biggest debtor by far. And the once proud U.S. dollar has collapsed in value from about 360 Japanese yen in 1970, 260 in 1985, and a little less than 100 today.

This collapse in both wages and the purchasing power of the dollar is pricing more and more Americans out of foreign travel and into isolation.

In 1987 for the first time in the post-World War II period, the United States became a net host in world travel. Travel and tourism, by the way, represents the lion's share of our so-called trade and services.

Finally, while some promise pie-in-the-sky profits for more liberalized trade, the reality of fierce global competition has clearly shown that each business cycle brings tighter margins and ever lower rewards for productive business investment.

I believe this is also why good, aggressive firms are fighting so fiercely for access to foreign markets and for every short-term advantage that trade liberalization can bring to the best and the quickest of them.

Individual firms, however large and powerful, do not have the ability to affect the longer term and the bigger picture. But, Mr. Chairman, you and your colleagues and the President do have the ability and the responsibility to affect the longer term and the larger global picture.

The end of the cold war and today's information technologies have given us the same sort of primitive market conditions for the

global economy that existed for many individual national economies 100 years ago.

The current directive for GATT and the World Trade Organization is not some high-minded world government, but a sort of world antigovernment. Its mandate is not to seek prosperity for workers, adequate profits for business, and a healthy environment for all of us. Instead, its idealized mandate, although bureaucratic and secretive, is to assure that nothing interferes with raw market forces.

I cannot stress enough how extremely naive and dangerous this is. It must be completely reconsidered.

Despite almost universal recognition of historic change, global economic issues continue to be framed as the same old traditional battles of small-minded protectionists versus enlighten globalists, or sometimes as the greedy rich versus the little guy.

The real issue, of course, is how to cope with the fundamentally new postcold war global economy in which our new information technologies have radically transformed the way national economies work.

Until we face the fact that it costs a company \$50,000 to \$100,000 a year to hire a first-rate software engineer in the United States, but it costs that same company or its competitor only one-tenth of that to hire the same talent in Bangalor, India or Moscow, we are not facing the real world. And the unhappy consequences of avoiding this real world are increasing every day.

Clearly, international trade is vital in today's dynamic global economy, yet trade now serves largely to facilitate the equalization of global factor pricing rather than to raise levels of productivity and standards of living.

Indeed, by undermining relatively productive industries, wages, and aggregate demand in the United States and elsewhere trade is now perversely inhibiting the growth of productivity and living standards, and trade is contributing to the need for far too much government borrowing in order to compensate for the shortage in worldwide private demand.

The U.S. role in the new global economy is not about this theory or that ideology, it is about jobs, incomes, business profits, and our country's future prosperity and stability. America should lead the international community in an urgent new effort to address today's new realities, and to provide growth and prosperity for ourselves and the world.

Thank you, Mr. Chairman and members. I look forward to discussing these matters with the committee.

[The prepared statement of Mr. McMillion follows:]

PREPARED STATEMENT OF CHARLES W. McMILLION, PH.D.

Thank you Mr. Chairman. I am happy to be here this morning to help you set the record straight on the global forces that now shape U.S. jobs, incomes and business profitability. The cynicism of the American people is perhaps nowhere more justified than with the steady diet of broken promises and misleading information that they are fed concerning international economic matters.

For some time the media have been dominated by sucker talk about expanding U.S. exports while they have largely ignored the far larger growth in U.S. imports. This is extremely misleading, and tells only about 40 percent of the trade story. Of course, what matters in trade, as in most other activities is the full picture: the net effect—exports minus imports.

The U.S. position in international trade has collapsed since the mid 1970s. Our 1994 trade deficit (net exports) could reach a world record \$160 billion for merchandise. While some promise that further world trade liberalization might yield a \$1 trillion tax cut, the reality since the last round of trade liberalization in 1979 has been a cumulative U.S. merchandise deficit of \$1.4 trillion—well over \$1 trillion in all goods and services and almost \$1 trillion just in manufacturing alone.

With NAFTA, there has been much hyperbole about US-Mexico trade. The U.S. does continue to have a trade surplus with Mexico and our exports are growing. But U.S. imports from Mexico are growing faster than exports. So the U.S. surplus fell by 72 percent from 1992 to 1993. Since NAFTA went into effect, our surplus has fallen another 51 percent. Since NAFTA, the U.S. deficit in electronics trade with Mexico has doubled to \$ 1.4 billion just for the year-to-June, 1994. Despite the export hype from the auto industry, since NAFTA, the U.S. deficit with Mexico in autos and parts worsened in the first six months of 1994 to a deficit of \$1.1 billion.

Again, concerning global trade, while some promise hundreds of thousands of new trade-related U.S. jobs the reality is no net jobs in internationally traded industries for over twenty years, all of the 44 million net jobs created over the past 20 years have come in non-traded (and inflationary), service sectors such as health care, local governments, retail sales and building maintenance. If the U.S. Commerce Department's estimate is correct—that each \$1 billion in net exports equals 20,000 high wage jobs—this year's \$160 billion deficit alone would eliminate over 3 million such jobs. California, with its estimated \$21 billion share of the deficit would lose over 400,000 high wage jobs and New York, with a deficit of about \$13 billion would lose about 250,000 jobs.

But of course with our flexible labor markets the major effect of these chronic deficits is on income as workers and businesses give up wages and profits to hold on to their jobs and markets.

While some promise increased prosperity, the reality is that real U.S. income growth has slowed dramatically from more than 40 percent per year 30 years ago to less than 10 percent today. (This is even after you include capital gains, rents, transfer payments, etc.) Wages that once grew by 3-5 percent a year in real terms, have plummeted for most Americans over the past 20 years. Even for the college educated they have remained stagnant. This wage stagnation at the top of the educational scale has been almost entirely ignored while attention has focused only on the growing gap in wages and on retraining needs.

Productivity growth has also slowed, despite the technological revolution, as trade has shifted the economy from highly productive, high wage traded industries on the one hand, to far less productive, low wage services on the other. Even in our current recovery, productivity growth is no better than the post-World War II average. But even more importantly the virtual identity that has long existed between productivity and wages has now been shattered, as Americans now work harder just to stay in place. Since 1978, productivity has grown by 17 percent, but total compensation—including health and other benefits—has grown by only 3 percent.

The Census report last week on income decline—income decline which is unprecedented in the post-World War II period—tells just about all that anyone needs to know about our economic and political climate: it's still the economy stupid! Every category of household and family, as well as individuals of every race suffered a drop in real income between 1989 and 1993. And according to the Census Bureau, the top 20 percent of households—those with more than \$58,200 of income in 1992—already have more than two wage earners. With everyone's incomes stagnant or declining, is it any surprise that free lunch tax cuts and free lunch additional spending are both so popular?

While some promise enhanced U.S. world leadership and status with further trade liberalization, the reality is that in order to pay for its massive and chronic trade deficits, the U.S. has plunged from being the world's leading creditor and banker by far to the world's biggest debtor by far. And the once proud U.S. dollar has collapsed in value, it bought 360 Japanese Yen in 1970, 260 in 1985, and only about 100 today.

This collapse in both wages and the purchasing power of the dollar is pricing more and more Americans out of foreign travel and into isolation. In 1987, for the first time in the post-World War II period, the U.S. became a net host in world travel. Travel and tourism, by the way, represent the lion's share of our so called trade in services.

Finally, while some promise pie-in-the sky profits from more liberalized trade, the reality of fierce global competition has clearly shown that each business cycle brings tighter margins and ever lower rewards for productive business investment. I believe this is also why good, aggressive firms are fighting so fiercely for access to for-

eign markets, and for every short term advantage that trade liberalization can bring to the best and the quickest firms.

Individual firms—however large and powerful—do not have the ability to affect the longer term and the bigger picture. But, Mr. Chairman, you and your colleagues and the President do have the ability and the responsibility to affect the longer term and the larger, global picture.

The end of the cold war and today's information technologies have given us the same sort of primitive market conditions for the global economy that existed for many individual national economies 100 years ago. The current directive for GATT and the World Trade Organization is not some high-minded "world government" but a sort of world anti-government. Its mandate is not to seek prosperity for workers, adequate profits for business and a healthy environment for everyone. Instead its idealized mandate—although bureaucratic and secretive—is to assure that nothing interferes with raw market forces.

I cannot stress enough how extremely naive and dangerous this is. It must be completely reconsidered.

Despite almost universal recognition of historic change, global economic issues continue to be framed as the same old traditional battles of small-minded protectionists vs enlightened globalists or as the greedy rich vs the little guy.

The real issue, of course, is how to cope with a fundamentally new, post-Cold War global economy in which our new information technologies have radically transformed the way national economies work. Until we face the fact that it costs a company \$50,000 to \$100,000 a year to hire a first-rate software engineer in the U.S., but it costs that same company (or their competitor) only one-tenth of that, or \$5000-\$10,000, to hire the same talent in Bangalor, India or Moscow, we are not facing the real world. And the unhappy consequences of avoiding this real world are increasing everyday.

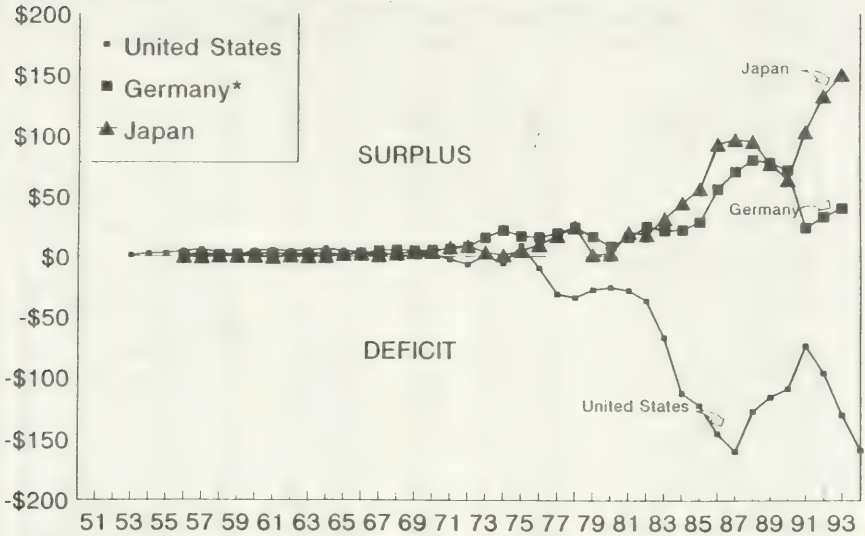
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The U.S. role in the new global economy is not about this theory or that ideology. It is about jobs, incomes, business profits and our country's future prosperity and stability. America should lead the international community in an urgent new effort to address today's new realities and to provide growth and prosperity for ourselves and the world.

Thank you and I look forward to discussing these matters with the Committee.

NET EXPORTS OF THE WORLD'S MAJOR ECONOMIC POWERS—THE U.S. POSITION IN INTERNATIONAL TRADE HAS COLLAPSED IN RECENT YEARS

Billions: Merchandise, Balance of Payments Basis



MBG Information Services. *Refers to the former West Germany before 1991.
International Financial Statistics (February 1994), International Monetary Fund.

U.S. TRADE BALANCES, 1987-93

(Census Basis; Foreign and Domestic Exports, F.a.s.; General Imports, Customs; Millions of Dollars)

SITC	1987	1988	1989	1990	1991	1992	1993	Change: 1992-1993
0-9 GRAND TOTAL	(\$152,119)	(\$116,526)	(\$109,399)	(\$101,718)	\$66,723)	(\$84,501)	(\$115,568)	(\$31,067) -37%
5-9 TOT MANUFACTURES	(124,560)	(105,742)	(92,408)	(73,464)	(47,302)	(65,879)	(91,217)	(25,338) -38%
0-4 TOT NON-MANUFACTURES	(27,559)	(12,784)	(16,991)	(28,254)	(19,422)	(18,623)	(24,352)	(5,729) -31%
75 Office & ADP machines	1,627	2,468	(2,411)	849	(6,311)	(5,410)	(11,834)	(6,424) -119%
76 Road vehicles	(51,215)	(47,322)	(45,451)	(41,715)	(38,013)	(37,306)	(42,154)	(4,848) -13%
79 Transport equipment other	12,307	15,188	18,353	25,003	28,660	30,258	25,454	(4,804) -16%
89 Misc. manufactured articles	(9,164)	(7,915)	(7,261)	(4,124)	(3,716)	(5,258)	(7,502)	(2,244) -43%
84 Apparel, clothing, accessories	(19,237)	(19,844)	(22,403)	(22,968)	(22,893)	(27,030)	(28,835)	(1,805) -7%
77 Elec. machinery & parts nes	7,076)	(8,058)	(5,527)	(2,047)	(7,444)	(2,305)	(3,574)	(1,269) -55%
32 Coal, coke and briquettes	3,283	3,865	3,982	4,322	4,416	3,907	2,688	(1,219) -31%
34 Gas, natural and manufactured	(2,202)	(2,238)	(2,062)	(2,737)	(2,773)	(2,919)	(4,125)	(1,206) -41%
24 Cork and wood	(3,211)	979	1,460	2,116	2,063	1,361	167	(1,194) -88%
67 Iron and steel	(7,822)	(9,261)	(7,215)	(6,384)	(4,883)	(5,460)	(6,510)	(1,050) -19%
85 Footwear	(7,248)	(8,006)	(7,977)	(9,013)	(8,912)	(9,473)	(10,473)	(1,000) -11%
66 Nonmetallic mineral mtrs	(6,313)	(6,966)	(6,589)	(5,335)	(4,996)	(5,306)	(6,292)	(986) -17%
12 Tobacco & tobacco mtrs	2,729	3,632	4,249	5,697	4,808	4,869	4,033	(836) -19%
58 Fertilizers (excl. those in 272)	320	212	1,828	1,631	2,077	1,438	1,888	(750) -52%
68 Nonferrous metals	(5,317)	(6,377)	(5,119)	(4,518)	(2,646)	(3,428)	(4,123)	(697) -20%
88 Househ. eq. opt. goods, watches	(2,868)	(2,988)	(3,241)	(2,720)	(3,239)	(3,583)	(4,221)	(638) -18%
72 Special industrial machinery	(1,557)	4,861	1,093	2,792	6,155	5,420	4,792	(628) -12%
25 Pulp and waste paper	815	1,093	1,288	1,202	1,467	1,745	1,119	(626) -36%
93 Fish & fish prep	(4,001)	(3,130)	(3,024)	(2,299)	(2,463)	(2,171)	(2,722)	(551) -25%
4 Cereals & cereal prep	7,392	11,462	14,530	11,759	9,927	10,966	10,436	(530) -5%
84 Paper, paperboard & mtrs	(4,111)	(4,434)	(4,289)	(3,468)	(1,995)	(1,605)	(2,112)	(507) -32%
26 Textile fibers and their wastes	1,601	2,161	2,581	3,308	3,112	2,459	1,959	(500) -21%
82 Furniture & parts thereof	(3,965)	(3,953)	(3,894)	(3,378)	(2,773)	(2,909)	(3,394)	(485) -17%
65 Textile yarns, fabrics, articles	(2,767)	(1,797)	(2,086)	(1,358)	(1,406)	(1,951)	(2,413)	(462) -24%
61 Metal manufactures nes	(4,347)	(4,601)	(4,222)	(2,904)	(2,162)	(2,232)	(2,684)	(452) -20%
63 Cork wood mtrs. ex. furniture	(1,323)	(1,146)	(1,046)	(832)	(703)	(1,061)	(1,428)	(367) -33%
52 Inorganic chemicals	1,178	1,203	1,144	654	861	958	902	(356) -37%
74 Industrial machinery & parts	(2,830)	(2,355)	(1,019)	1,548	3,100	3,354	3,042	(312) -9%
98 Unclassified low valued items	(2,334)	(2,595)	(2,761)	(3,442)	(3,424)	(3,947)	(4,250)	(303) -8%
93 Spec. transact. not class. by kind	(6,851)	(6,931)	(7,996)	(9,102)	(7,996)	(8,987)	(9,280)	(293) -3%
57 Plastics in primary form	2,944	4,159	4,075	4,473	5,640	4,957	4,683	(274) -6%
73 Metalworking machinery	6,951	4,791	(1,193)	(833)	(821)	(21)	(269)	(248) N/A
62 Rubber manufactures nes	2,049)	(1,980)	(2,117)	(1,437)	(1,020)	(1,183)	(1,412)	(229) -19%
90 Live animals	(1,521)	(1,651)	(3,811)	(668)	(483)	(796)	(1,017)	(221) -21%
23 Crude rubber, inc. synthetic	(2,781)	4,691	(5,941)	(2,641)	(1,621)	(2,461)	(4,241)	(1,781) -72%
98 Animal feedstuffs	2,576	3,248	2,692	2,594	2,915	3,254	3,102	(152) -5%
83 Travel goods, handbags etc.	(1,811)	(1,857)	(2,017)	(2,081)	(2,189)	(2,296)	(2,431)	(135) -6%
81 Prefab. bldg. plumb. lightng. heat fix.	(5,761)	(5,721)	(6,061)	(5,411)	(5,241)	(6,441)	(6,441)	(120) -2%
29 Crude animal veg. materials	(415)	(370)	(368)	(178)	(176)	(209)	(287)	(78) -37%
35 Electric current	3	0	(379)	29	(433)	(526)	(601)	(75) -14%
95 Coin, inc. gold, proof pres. sets	46	24	(214)	(118)	(50)	(77)	(138)	(61) -79%
61 Leather & mtrs. dressed furskins	(1,771)	(2,431)	(1,491)	9	75	27	(33)	(60) -222%
21 Hides, skins & furskins, raw	1,457	1,617	1,535	1,596	1,225	1,187	1,131	(58) -5%
27 Crude fertilizers & minerals	562	608	119	162	427	516	471	(45) -9%
71 Power generating machinery	3,391	535	458	1,294	3,167	2,544	2,513	(31) -1%
41 Animal meats and fats	418	567	501	410	419	491	465	(26) -5%
96 Metal coins, not legal tender	151	71	51	11	(4)	2	(1)	(3) N/A
43 Animal veg. oils processed nes	31	33	36	34	17	16	37	21 131%
92 Dairy products	(671)	80	3	(122)	15	217	244	27 12%
28 Metalliferous ores & scrap	569	1,142	1,591	1,116	523	281	316	35 12%
87 Prof. scient. control instruments	3,546	4,569	5,521	6,393	7,298	7,340	7,392	52 1%
53 Dye, tan, coloring materials	(3,011)	(841)	(241)	311	244	262	334	72 27%
51 Meat & meat prep	(1,381)	(335)	274	261	738	1,505	1,576	71 5%
54 Medical & pharmaceutical prod.	1,241	1,472	1,633	1,677	1,624	1,634	1,708	74 5%
96 Sugar, sugar prep. & honey	(596)	(574)	(682)	(847)	(734)	(809)	(731)	(78) 10%
99 Items not classified elsewhere	15,244	21,077	25,952	9,923	10,568	10,568	10,651	83 1%
42 Fixed veg. oils crude/refined	3	73	102	(49)	(138)	(127)	(35)	92 72%
22 Oil seeds & oleaginous fruits	4,563	4,977	4,184	3,719	4,188	4,666	4,810	144 3%
51 Organic chemicals	2,287	2,562	3,721	3,137	2,916	1,776	1,922	146 8%
11 Beverages	(3,114)	3,150)	3,011	(3,136)	(2,801)	(3,107)	(2,948)	159 5%
59 Chemicals nes	1,748	2,113	2,886	2,537	3,978	3,937	4,137	200 5%
58 Plastics in non-primary form	346	439	567	681	1,662	1,079	1,296	217 20%
33 Petroleum & petroleum prod.	(37,180)	34,163)	(42,283)	(53,854)	(32,297)	(43,957)	(43,728)	229 1%
99 Miscellaneous food prep.	227	266	412	207	307	1,025	1,293	268 26%
95 Vegetables and fruits	(1,234)	(825)	(915)	(268)	498	567	897	330 58%
55 Essential oils, perfumes, soaps etc.	73	121	350	699	1,013	998	1,333	335 34%
97 Coffee, tea, cocoa, spices etc.	(4,308)	(3,555)	(3,355)	(2,830)	(2,826)	(2,811)	(2,259)	552 13%
76 Telecomm. & sound/record equip.	15,141	(14,926)	(16,791)	(2,181)	(2,606)	(13,491)	(13,066)	425 3%
97 Nonmonetary gold exports	140	397	434	125	119	293	749	456 221%

MBG Information Services and U.S. Department of Commerce

THE CHRONIC U.S. NET EXPORT DEFICIT

Allocation to States by Gross State Product Shares

Millions of Dollars	Merchandise: Exports, F.a.s./Imports, Customs				Cumulative Net Exports 1991-1994
	1991	1992	1993	1994 Est.	
United States Total.....	(\$66,723)	(\$84,501)	(\$115,568)	(\$155,000)	(\$421,792)
California.....	(8,953)	(11,338)	(15,506)	(20,797)	(56,594)
New York.....	(5,580)	(7,067)	(9,666)	(12,964)	(35,277)
Texas.....	(4,639)	(5,875)	(8,035)	(10,777)	(29,326)
Illinois.....	(3,274)	(4,147)	(5,672)	(7,607)	(20,700)
Florida.....	(2,991)	(3,788)	(5,181)	(6,949)	(18,909)
Pennsylvania.....	(2,984)	(3,779)	(5,169)	(6,932)	(18,865)
Ohio.....	(2,674)	(3,387)	(4,632)	(6,213)	(16,907)
New Jersey.....	(2,495)	(3,160)	(4,322)	(5,797)	(15,774)
Michigan.....	(2,221)	(2,813)	(3,847)	(5,160)	(14,041)
Massachusetts.....	(1,830)	(2,318)	(3,170)	(4,251)	(11,569)
North Carolina.....	(1,730)	(2,190)	(2,996)	(4,018)	(10,934)
Virginia.....	(1,702)	(2,156)	(2,948)	(3,954)	(10,761)
Georgia.....	(1,684)	(2,133)	(2,917)	(3,912)	(10,646)
Washington.....	(1,395)	(1,767)	(2,417)	(3,241)	(8,820)
Indiana.....	(1,339)	(1,696)	(2,319)	(3,111)	(8,465)
Maryland.....	(1,312)	(1,661)	(2,272)	(3,047)	(8,292)
Missouri.....	(1,245)	(1,577)	(2,157)	(2,893)	(7,872)
Minnesota.....	(1,211)	(1,534)	(2,098)	(2,814)	(7,656)
Wisconsin.....	(1,204)	(1,525)	(2,086)	(2,798)	(7,614)
Tennessee.....	(1,182)	(1,497)	(2,047)	(2,746)	(7,471)
Connecticut.....	(1,130)	(1,431)	(1,957)	(2,625)	(7,144)
Louisiana.....	(1,118)	(1,416)	(1,937)	(2,598)	(7,069)
Colorado.....	(902)	(1,142)	(1,562)	(2,095)	(5,701)
Alabama.....	(867)	(1,098)	(1,502)	(2,014)	(5,481)
Kentucky.....	(819)	(1,037)	(1,418)	(1,902)	(5,176)
Arizona.....	(818)	(1,036)	(1,417)	(1,900)	(5,171)
South Carolina.....	(779)	(986)	(1,349)	(1,809)	(4,922)
Oregon.....	(689)	(873)	(1,194)	(1,601)	(4,358)
Oklahoma.....	(679)	(860)	(1,176)	(1,577)	(4,292)
Iowa.....	(657)	(832)	(1,138)	(1,526)	(4,153)
Kansas.....	(625)	(791)	(1,082)	(1,451)	(3,949)
Mississippi.....	(486)	(616)	(842)	(1,130)	(3,074)
Arkansas.....	(476)	(602)	(824)	(1,105)	(3,006)
Nebraska.....	(414)	(524)	(716)	(961)	(2,615)
Nevada.....	(391)	(495)	(677)	(908)	(2,470)
Utah.....	(388)	(491)	(672)	(901)	(2,452)
Hawaii.....	(361)	(457)	(626)	(839)	(2,283)
New Mexico.....	(355)	(449)	(614)	(824)	(2,242)
West Virginia.....	(340)	(431)	(589)	(790)	(2,150)
Alaska.....	(307)	(389)	(532)	(714)	(1,943)
New Hampshire.....	(286)	(362)	(496)	(665)	(1,809)
Maine.....	(272)	(345)	(472)	(633)	(1,723)
Delaware.....	(249)	(316)	(432)	(579)	(1,577)
Rhode Island.....	(242)	(307)	(419)	(563)	(1,531)
Idaho.....	(223)	(283)	(387)	(519)	(1,412)
Montana.....	(169)	(214)	(293)	(393)	(1,069)
South Dakota.....	(161)	(204)	(278)	(373)	(1,016)
Wyoming.....	(152)	(192)	(263)	(352)	(958)
North Dakota.....	(141)	(179)	(245)	(328)	(893)
Vermont.....	(131)	(166)	(227)	(305)	(830)

No reliable data exist for foreign imports by U.S. states. Allocating imports by Gross State Product (1991) shares is one method of deriving a very rough set of estimates.
 MBG Information Services and U.S. Dept. of Commerce, Bureau of the Census & BEA.

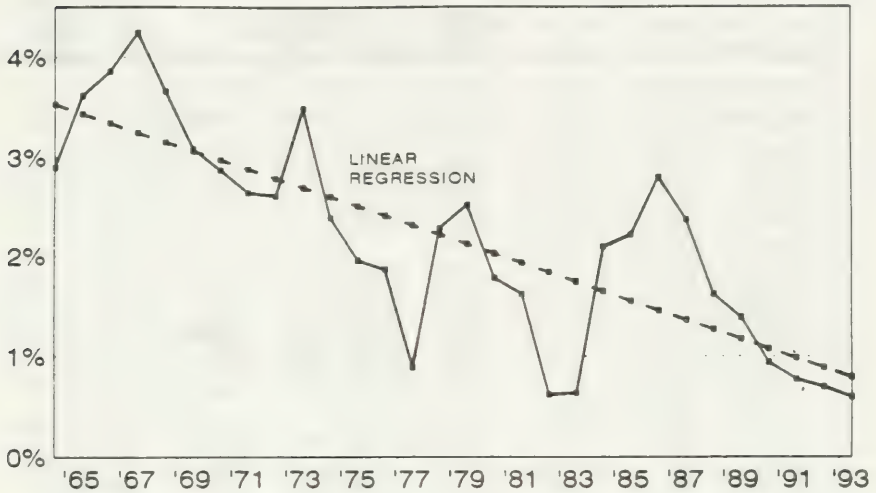
TWENTY YEARS OF U.S. JOB GROWTH

JOB CREATION ONLY IN SECTORS NOT EXPOSED TO INTERNATIONAL TRADE

Industry	1972	1992	CHANGE 1972 - 1992
TOTAL EMPLOYMENT	94 113,500	138,257 100	44,143,600
WAGE AND SALARY	81,189,000	116,672,000	35,483,000
PROPRIETORS	12,924 500	21,585 100	8,660 600
FARM	2,643,000	2,172,000	(471,000)
NONFARM	10,281 500	19,413 100	9,131,600
FARM	3,789,000	3,034,000	(755,000)
NONFARM	90,324 500	135,223 100	44,898,600
PRIVATE	73,647 500	113,779 100	40,131,600
AGRIC. SERV. FORESTRY, FISHERIES & OTHER	573 700	1,482 500	908 800
MINING	736 300	914 300	178,000
CONSTRUCTION	4 721 000	6,537,200	1,816,200
MANUFACTURING	19,342,700	18,719,100	(623,600)
NONDURABLE GOODS	8 153,800	8,034 400	(119,400)
FOOD AND KINDRED PRODUCTS	1 743 400	1 667 500	(75,900)
TEXTILE MILL PRODUCTS	1,003 600	680 200	(323,400)
APPAREL AND OTHER TEXTILE PRODUCTS	1 387 500	1 049 600	(337 900)
PAPER AND ALLIED PRODUCTS	684 900	690 900	6,000
PRINTING AND PUBLISHING	1,135 000	1,647 300	512,300
CHEMICALS AND ALLIED PRODUCTS	1,011,300	1,092,000	80,700
PETROLEUM AND COAL PRODUCTS	183 600	154 800	(28,800)
RUBBER AND MISC. PLASTICS PRODUCTS	624 500	879 900	255,400
LEATHER AND LEATHER PRODUCTS	302 900	123 600	(179,300)
DURABLE GOODS	11,188 900	10,684 700	(504,200)
LUMBER AND WOOD PRODUCTS	689 900	809,600	119,700
FURNITURE AND FIXTURES	510,400	501,700	(8,700)
PRIMARY METAL INDUSTRIES	1,230,900	695,200	(535,700)
FABRICATED METAL PRODUCTS	1,400,400	1,342,800	(57,600)
MACHINERY AND COMPUTER EQUIPMENT	1,919,000	1,962,700	43,700
ELECTRONIC EQUIP. EXC. COMPUTER EQUIP	1,839,600	1,537 600	(302,000)
TRANSPORT EQUIP. EXCL. MOTOR VEHICLES	915 700	1,022,600	106 900
MOTOR VEHICLES AND EQUIPMENT	886 100	819,800	(66,300)
STONE, CLAY, AND GLASS PRODUCTS	675 500	612 400	(63,100)
INSTRUMENTS AND RELATED PRODUCTS	459 500	930 700	471 200
MISC. MANUFACTURING INDUSTRIES	478 900	449 600	(29,300)
TRANSPORTATION AND PUBLIC UTILITIES	4 915,000	6,526,800	1,611,800
RAILROAD TRANSPORTATION	575 000	263 000	(312,000)
TRUCKING AND WAREHOUSING	1 395,300	2,141,400	746,100
LOCAL AND INTERURBAN PASSENGER TRANSIT	332 500	435,400	102,900
TRANSPORTATION BY AIR	353,300	735,600	382,300
TRANSPORTATION SERVICES	132 800	457 900	325,100
COMMUNICATIONS	1,150,200	1,299,300	149,100
ELECTRIC, GAS AND SANITARY SERVICES	747 000	987 800	240,800
WHOLESALE TRADE	4,336,700	6,578,100	2,241,400
RETAIL TRADE	14,361 600	22,783 000	8,421 400
BUILDING MATERIALS AND GARDEN EQUIP	680 700	843 100	162,400
GENERAL MERCHANDISE STORES	2,558,500	2,578,100	19,600
FOOD STORES	2,118,200	3,546,100	1,427,900
AUTOMOTIVE DEALERS AND SERVICE STATIONS	2,163 500	2,271 700	108 200
APPAREL AND ACCESSORY STORES	866 800	1,287 200	420,400
HOME FURNITURE AND FURNISHINGS STORES	620 700	964 600	343,900
EATING AND DRINKING PLACES	3 176 000	7,138 600	3,962,600
MISCELLANEOUS RETAIL	2,177 200	4,153,600	1,976,400
FINANCE, INSURANCE, AND REAL ESTATE	6,671 100	10,496 300	3,824,200
DEPOSITORY & NONDEPOSITORY CREDIT INST	1 537 100	2,536,400	999,300
OTHER FINANCE, INSURANCE & REAL ESTATE	5,134 000	7,959,900	2,824,900
SECURITY & COMMODITY BROKERS & SERVICES	264 200	533 400	269,200
INSURANCE CARRIERS	1,048,000	1,512,000	464,000
INSURANCE AGENTS, BROKERS, AND SERVICES	569 900	1,255,900	686,000
REAL ESTATE	2,388,800	3,744,900	1,356,100
HOLDING & OTHER INVESTMENT COMPANIES	793 200	912 700	119,500
SERVICES	17 989 400	39,742,800	21,753,400
HOTELS AND OTHER LODGING PLACES	1,029 800	1,749 600	719,800
PERSONAL SERVICES	1 579 600	2,403,400	823,800
PRIVATE HOUSEHOLDS	2,200,000	1,344 000	(856,000)
BUSINESS SERVICES	2,236,200	8,283,200	6,047,000
AUTO REPAIR, SERVICES, AND PARKING	651 300	1,413,900	762,600
MISCELLANEOUS REPAIR SERVICES	432 600	658 500	225,900
AMUSEMENT AND RECREATION SERVICES	750 400	1,753,900	1,003,500
MOTION PICTURES	215 300	480 500	265,200
HEALTH SERVICES	3,860,800	9,702,600	5,841,800
LEGAL SERVICES	486 500	1,363,200	876,700
EDUCATIONAL SERVICES	1,399,300	2,093,000	693,700
MUSEUMS, BOTANICAL, ZOOLOGICAL GARDENS	23 000	72 000	49,000
MEMBERSHIP ORGANIZATIONS	1 867 000	2,008,000	141,000
MISCELLANEOUS SERVICES	1 257 600	195 400	(1,062,200)
GOVERNMENT & GOVERNMENT ENTERPRISES	16 677 000	21 444 000	4,767 000
FEDERAL, CIVILIAN	2,856 000	3,172,000	316,000
MILITARY	2,820 000	2,618 000	(202,000)
STATE AND LOCAL	11 001 000	15 654 000	4,653 000

**U.S. DISPOSABLE PERSONAL INCOME GROWTH PER CAPITA—THE INCOME GROWTH OF
EVEN THE AVERAGE AMERICAN IS SLOWING SHARPLY**

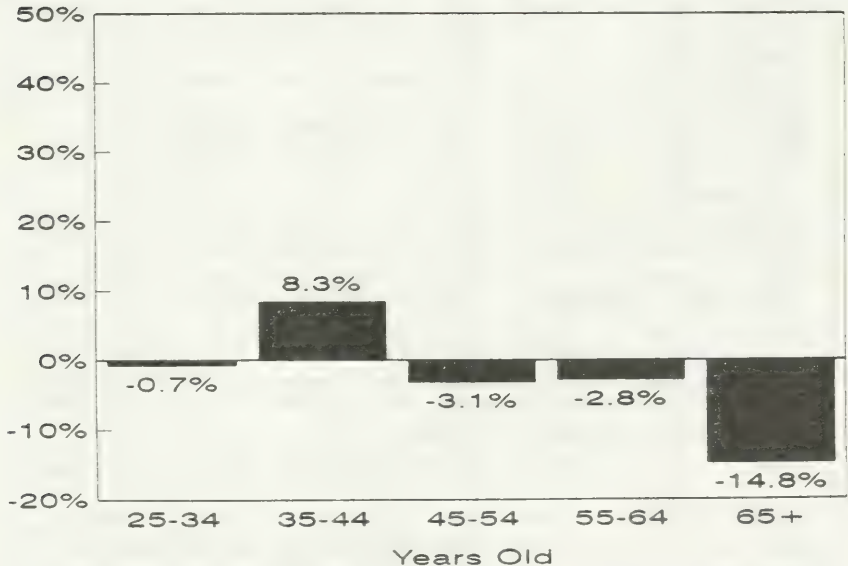
Four Year Moving Average Annual Growth (Real 1987 Dollars)



MBG Information Services and U.S. Department of Commerce, BEA.

**MEN COMPLETING 5 OR MORE YEARS OF COLLEGE—REAL YEARLY WAGES AND SALARIES:
1974 AND 1990**

Percent Total Real Change



MBG Information Services and U.S. Bureau of the Census.

DECLINING U.S. INCOMES

(Households, Families, and Persons)

Percent Change in

Real Income

1993 to 1993 to

1992 1989

Characteristic	1993 Number (thous.)	1993	Median income (in 1993 dollars) 1992 1989	1992	1989
HOUSEHOLDS					
All households.....	97 107	\$31,241	\$31,553	\$33,585	-1.0 -7.0
Region:					
Northeast.....	19 470	\$33,747	\$33,987	\$37,924	-0.7 -11.0
Midwest.....	23 385	\$31,400	\$31,726	\$33,407	-1.0 -6.0
South.....	33 904	\$28,441	\$28,436	\$30,082	0.0 -5.5
West.....	20,347	\$33,739	\$34,322	\$36,085	-1.7 -6.5
Residence:					
Inside metropolitan areas	75,579	\$33,220	\$33,447	\$36,148	-0.7 -8.1
1 million or more.....	47 783	\$35,240	\$35,830	\$38,468	-1.6 -8.4
Inside central cities.....	18,639	\$26,622	\$27,498	\$30,260	-3.2 -12.0
Outside central cities.....	29,145	\$41,211	\$41,524	\$44,745	-0.8 -7.9
Under 1 million.....	27 795	\$30,642	\$30,666	\$32,284	-0.1 -5.1
Inside central cities.....	11 751	\$26,433	\$26,814	\$28,982	-1.4 -8.8
Outside central cities.....	16 045	\$33,642	\$33,160	\$35,373	1.5 -4.9
Outside metropolitan areas.....	21 528	\$25,309	\$25,644	\$26,057	-1.3 -2.9
Race & Hispanic origin of householder:					
White.....	82 387	\$32,960	\$33,173	\$35,329	-0.6 -6.7
White, not Hispanic.....	75 697	\$34,173	\$34,287	\$36,162	-0.3 -5.5
Black.....	11,281	\$19,532	\$19,316	\$21,232	1.1 -8.0
Other races.....	3,439	\$31,403	\$31,152	\$36,343	-5.3 -13.6
Asian and Pacific Islander.....	2,233	\$38,347	\$38,933	\$41,964	-1.5 -8.6
Hispanic origin.....	7 362	\$22,886	\$23,273	\$25,382	-1.7 -9.8
Age of Householder:					
15 to 24 years.....	5 263	\$19,340	\$18,192	\$21,632	6.3 -10.6
25 to 34 years.....	19,717	\$31,281	\$32,174	\$34,610	-2.8 -9.8
35 to 44 years.....	22 293	\$40,862	\$41,046	\$43,714	-0.4 -6.5
45 to 54 years.....	16,837	\$46,207	\$45,766	\$48,381	1.0 -4.5
55 to 64 years.....	12,188	\$33,474	\$35,011	\$35,964	-4.4 -6.9
65 years and over.....	20,806	\$17,751	\$17,648	\$18,368	0.6 -3.4
FAMILIES					
All families.....	68 506	\$36,959	\$37,668	\$39,696	-1.9 -6.9
Race & Hispanic origin of householder:					
White.....	57 881	\$39,300	\$39,828	\$41,785	-1.3 -5.9
Black.....	7 993	\$21,542	\$21,735	\$23,562	-0.9 -8.6
Hispanic origin.....	5,946	\$23,654	\$24,260	\$26,981	-2.5 -12.3
Type of family:					
All races:					
Married—couple families.....	53,181	\$43,005	\$43,144	\$44,810	-0.3 -4.0
Female householder, no husband present.....	12,411	\$17,443	\$17,535	\$18,988	-0.5 -8.1
White:					
Married—couple families.....	47,452	\$43,675	\$43,776	\$45,566	-0.2 -4.2
Female householder, no husband present.....	8,131	\$20,000	\$20,518	\$21,900	-2.5 -8.7
Black:					
Married—couple families.....	3,715	\$35,218	\$35,353	\$35,891	-0.4 -1.9
Female householder, no husband present.....	3,828	\$11,909	\$12,199	\$13,508	-2.4 -11.8
Hispanic origin:					
Married—couple families.....	4,038	\$28,454	\$29,030	\$31,655	-2.0 -10.1
Female householder, no husband present.....	1,498	\$12,047	\$13,084	\$13,512	-7.9 -10.8
EARNINGS OF YEAR—ROUND, FULL—TIME WORKERS					
Male.....	49 818	\$30,407	\$31,101	\$31,672	-2.2 -4.0
Female.....	33,524	\$21,747	\$22,015	\$21,821	-1.2 -0.3
PER CAPITA INCOME					
All races.....	259 753	\$15,574	\$15,291	\$16,205	1.8 -3.9
White.....	215,221	\$16,576	\$16,258	\$17,185	2.0 -3.5
Black.....	33 040	\$9,806	\$9,516	\$10,112	3.1 -3.0
Hispanic origin.....	26,646	\$8,771	\$8,848	\$9,547	-0.9 -8.1

FALLING INCOME OF U.S. HOUSEHOLDS

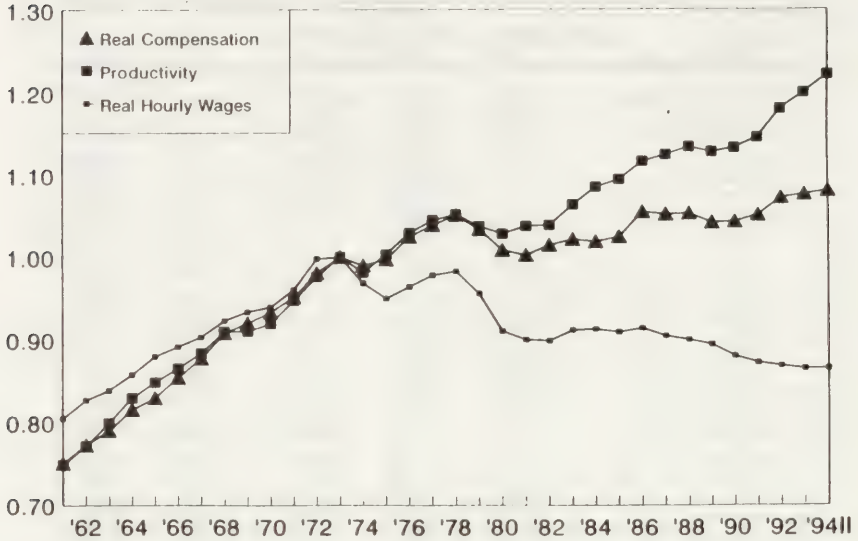
UNPRECEDENTED DECLINE DURING CURRENT ECONOMIC RECOVERY

States	MEDIAN REAL HOUSEHOLD INCOME			Change: 1991 - '93	
	1991	1992	1993	(\$)	(%)
District of Columbia.....	\$31,591	\$31,152	\$27,304	(\$4,287)	-13.6%
Connecticut.....	44,485	42,064	39,516	(4,969)	-11.2%
South Carolina.....	29,043	28,404	26,053	(2,990)	-10.3%
Maine.....	29,479	30,504	26,908	(2,571)	-8.7%
West Virginia.....	24,521	20,878	22,421	(2,100)	-8.6%
Arkansas.....	24,852	24,597	23,009	(1,843)	-7.4%
Iowa.....	30,149	29,603	28,379	(1,770)	-5.9%
New York.....	33,512	31,981	31,593	(1,919)	-5.7%
Arizona.....	32,351	30,237	30,510	(1,841)	-5.7%
Virginia.....	38,314	39,341	36,433	(1,881)	-4.9%
California.....	35,441	35,948	33,990	(1,451)	-4.1%
New Jersey.....	42,244	40,168	40,519	(1,725)	-4.1%
Kansas.....	30,977	31,254	29,740	(1,237)	-4.0%
Michigan.....	33,990	33,233	32,646	(1,344)	-4.0%
Wyoming.....	30,648	31,113	29,442	(1,206)	-3.9%
New Mexico.....	27,837	26,634	26,758	(1,079)	-3.9%
Pennsylvania.....	32,107	30,777	30,946	(1,161)	-3.6%
Wisconsin.....	32,924	34,305	31,766	(1,158)	-3.5%
Tennessee.....	25,921	25,046	25,102	(819)	-3.2%
Kentucky.....	25,124	24,188	24,376	(748)	-3.0%
Missouri.....	29,489	28,180	28,663	(826)	-2.8%
Alabama.....	25,747	26,581	25,082	(665)	-2.6%
Oklahoma.....	26,930	26,041	26,260	(670)	-2.5%
Illinois.....	33,661	32,496	32,857	(804)	-2.4%
UNITED STATES TOTAL.....	31,964	31,553	31,241	(723)	-2.3%
Louisiana.....	26,799	26,201	26,312	(487)	-1.8%
Massachusetts.....	37,684	37,447	37,045	(639)	-1.7%
Texas.....	29,081	28,790	28,713	(368)	-1.3%
Florida.....	28,800	28,168	28,537	(263)	-0.9%
Ohio.....	31,530	32,344	31,285	(245)	-0.8%
Nebraska.....	31,216	30,948	31,008	(208)	-0.7%
Washington.....	35,867	34,915	35,655	(212)	-0.6%
Alaska.....	42,915	43,053	42,762	(153)	-0.4%
New Hampshire.....	38,027	40,617	37,964	(63)	-0.2%
Montana.....	26,264	27,319	26,398	134	0.5%
Vermont.....	30,862	33,736	31,065	203	0.7%
North Carolina.....	28,424	28,602	28,820	396	1.4%
Maryland.....	39,116	38,317	39,939	823	2.1%
North Dakota.....	27,322	27,766	27,991	669	2.4%
Nevada.....	34,815	32,863	35,814	999	2.9%
Indiana.....	28,606	29,384	29,475	869	3.0%
Colorado.....	33,182	33,456	34,205	1,023	3.1%
Rhode Island.....	32,497	31,343	33,509	1,012	3.1%
Oregon.....	31,843	32,883	32,846	1,003	3.1%
Delaware.....	34,512	36,746	36,064	1,552	4.5%
South Dakota.....	26,049	27,045	27,379	1,330	5.1%
Minnesota.....	31,179	31,908	33,302	2,123	6.8%
Mississippi.....	20,647	21,186	22,191	1,544	7.5%
Hawaii.....	39,461	43,374	42,662	3,201	8.1%
Georgia.....	28,778	29,659	31,625	2,847	9.9%
Idaho.....	27,628	28,533	30,856	3,228	11.7%
Utah.....	29,566	35,276	35,786	6,220	21.0%
Los Angeles CMSA.....	38,046	36,312	33,853	(4,193)	-11.0%
New York CMSA.....	34,975	35,184	34,401	(574)	-1.6%

All data are adjusted by the Census Bureau to real, 1993 CPI-U-X1 Adjusted Dollars.
 MBG Information Services and U.S. Department of Commerce, Bureau of the Census.

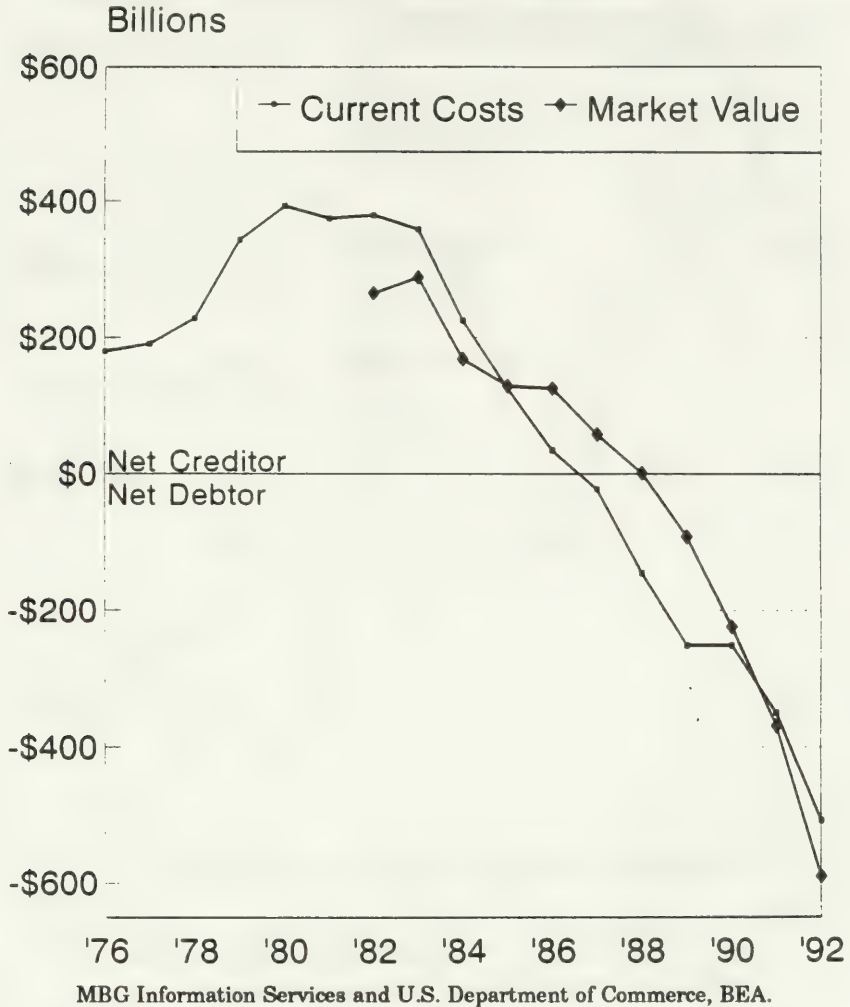
**PRODUCTIVITY AND WAGES IN ALL U.S. NONFARM BUSINESS—THE STRONG LINK
BETWEEN PRODUCTIVITY GROWTH AND WAGE INCREASES HAS BEEN DESTROYED**

All U.S. Nonfarm Business Index: 1973 = 1.00

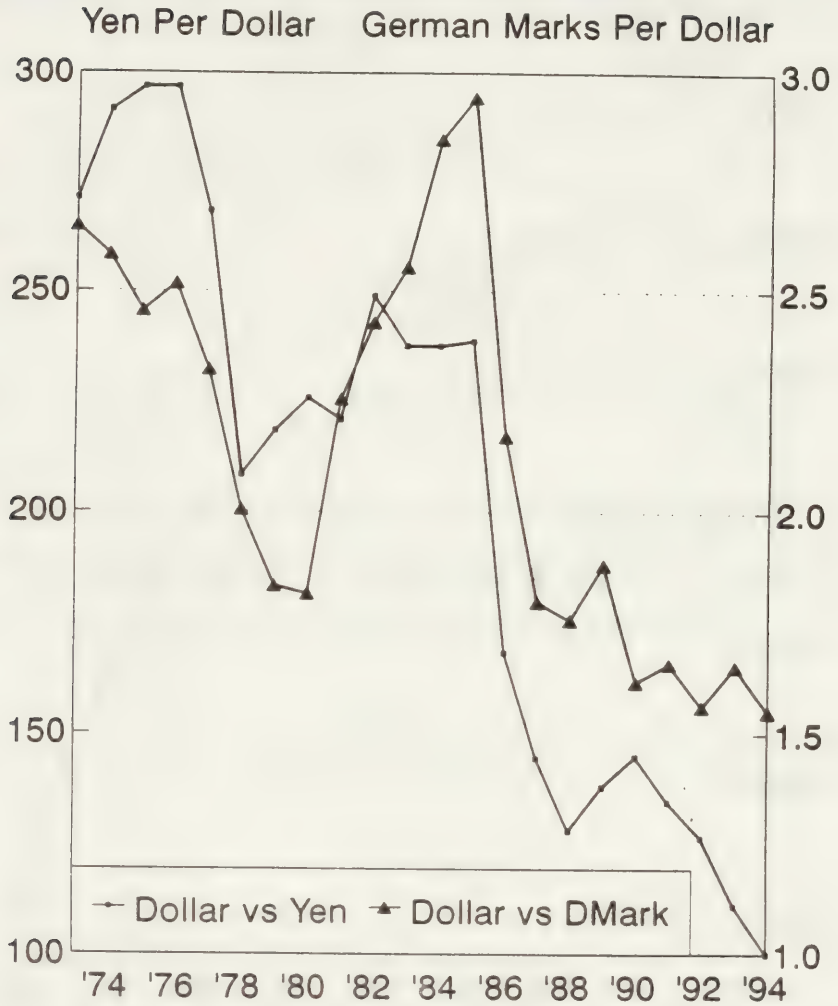


MBG Information Services and U.S. Department of Labor, BLS.

NET INTERNATIONAL INVESTMENT POSITION OF THE UNITED STATES—U.S. TRADE DEFICITS HAVE RAPIDLY CHANGED THE COUNTRY FROM THE WORLD'S LEADING CREDITOR TO ITS BIGGEST DEBTOR

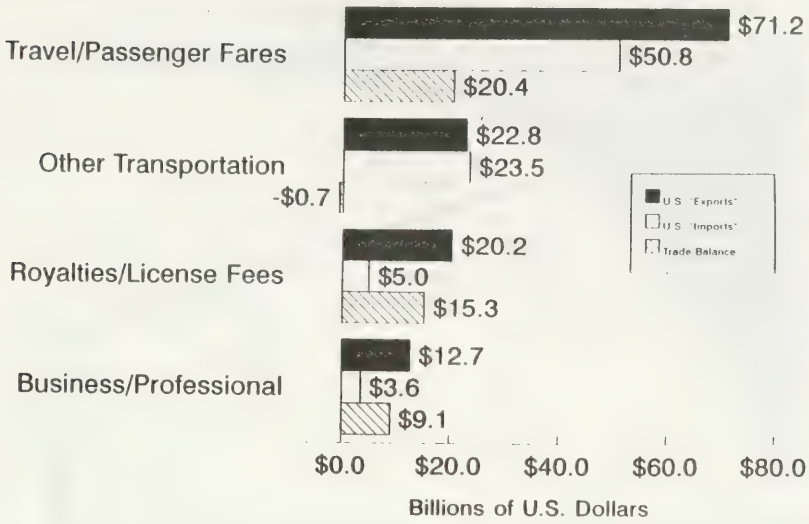


THE DOLLAR'S COLLAPSING PURCHASING POWER



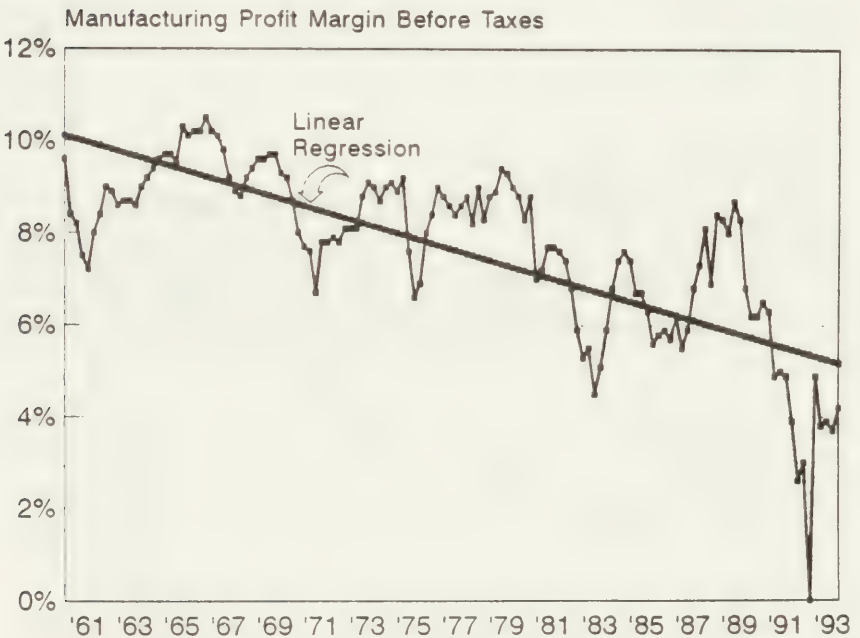
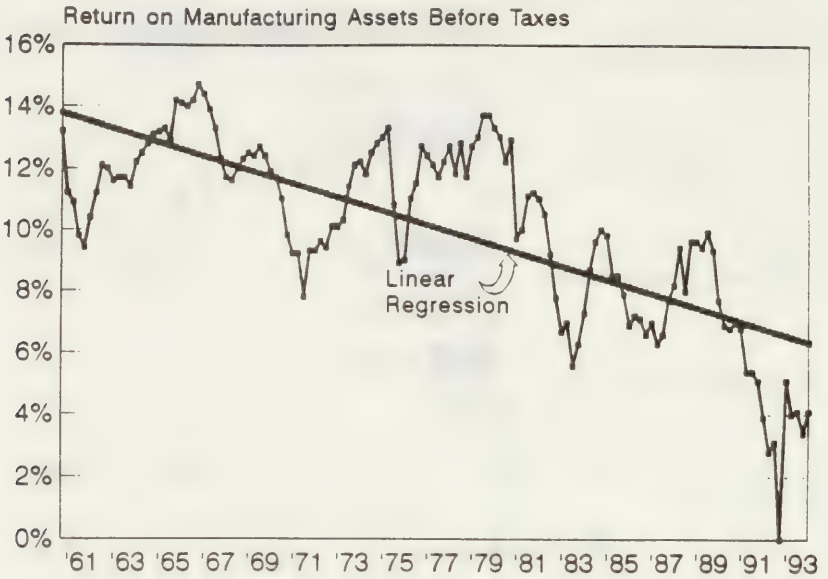
MBG Information Services and International Monetary Fund.

U.S. SERVICES TRADE: 1992—THE SURPLUS IN SERVICES TRADE IS LARGELY A FUNCTION OF TOURISM AND ROYALTIES



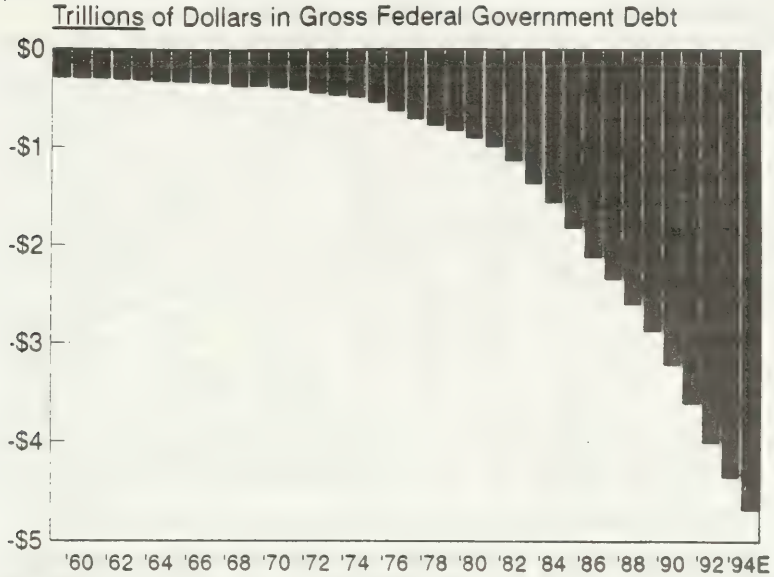
U.S. Department of Commerce, BEA.

DECLINING PROFITS IN U.S. MANUFACTURING—THE REWARD FOR INVESTING IN TRADED
U.S. INDUSTRIES IS FALLING RAPIDLY

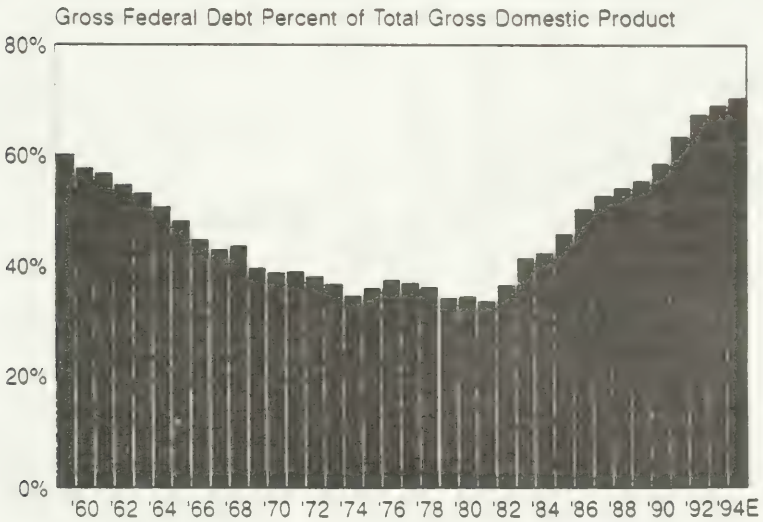


MBG Information Services and U.S. Department of Commerce, BEA.

THE U.S. FEDERAL DEBT CRISIS—AS PRIVATE PURCHASING POWER STAGNATES, FEDERAL PUMP PRIMING SKYROCKETS

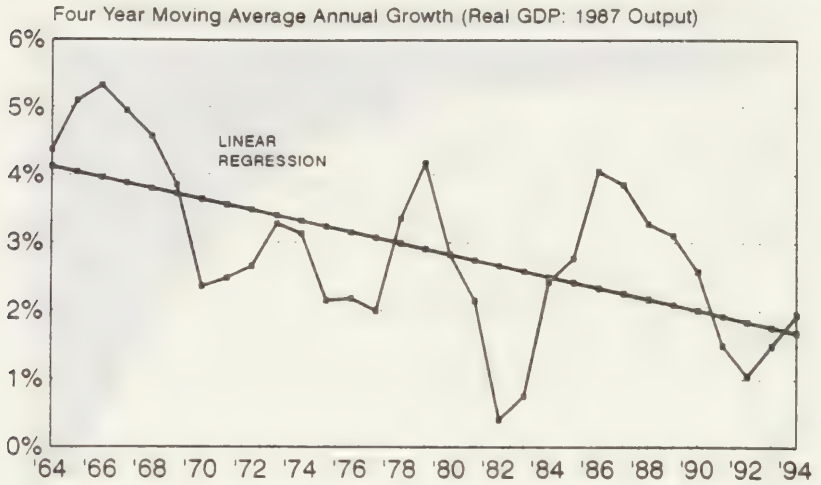


PAYING DOWN U.S. WORLD WAR II DEBTS ENDED IN 1974; MASSIVE NEW DEBT ACCUMULATION BEGAN IN 1982



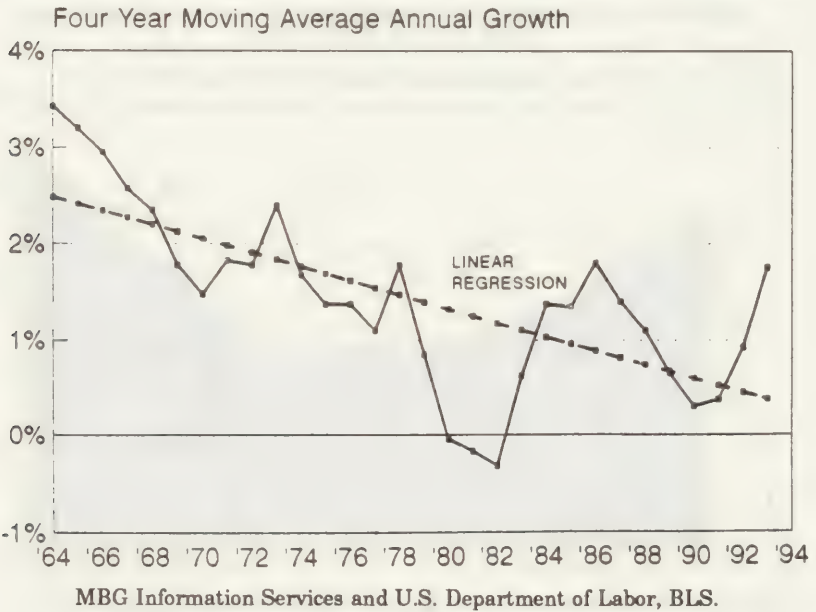
MBG Information Services and U.S. Departments of Treasury and Commerce.

U.S. ECONOMIC GROWTH—REAL ECONOMIC GROWTH IS SLOWING AS ECONOMY SHIFTS TO LESS PRODUCTIVE, MORE INFLATIONARY NON-TRADED SECTORS



MBG Information Services and U.S. Department of Commerce, BEA.

PRODUCTIVITY GROWTH: NONFARM BUSINESS—THE SHIFT TO LESS PRODUCTIVE, NONINTERNATIONALLY TRADED SECTORS IS DEVASTATING PRODUCTIVITY GROWTH



DECLINING U.S. NET EXPORTS TO MEXICO: WINNERS AND LOSERS

Merchandise Net Exports (\$1,000) Exports FAS/Imports Customs	U.S. Net Exports to Mexico		Change in U.S. Net Exports to Mexico	
	1992	1993	1993/1992	1994/1993
All commodities	\$5,670,338	\$1,597,814	\$1,544,770	\$813,314
35-ELECTRIC MACHINERY ETC. SOUND EQUIP. TV EQUIP.	1,349,653	1,681,020	698,707	1,311,283
90-OPTIC PHOTO ETC. MEDIC OR SURGICAL INSTRUMENTS	643,104	495,999	328,331	58,271
84-NUCLEAR REACTORS BOILERS MACHINERY ETC. PAR	3,054,103	2,562,562	1,441,543	1,228,078
87-VEHICLES EXCEPT RAILWAY OR TRAMWAY AND PARTS	1,173,498	2,300,519	1,004,387	1,126,479
72-IRON AND STEEL	642,875	113,059	183,738	53,082
34-FURNITURE BEDDING ETC. LAMPS ILLUMIN ETC. PREFA	146,101	214,058	198,419	213,251
27-MINERAL FUEL OIL ETC. BITUMIN SUBST. MINERAL	3,345,691	3,698,214	1,819,792	1,890,526
09-COFFEE TEA MATE & SPICES	252,120	254,615	141,589	189,651
40-DAIRY PRODUCTS BIRDS EGGS HONEY ED ANIMAL PR	141,531	223,212	126,204	80,932
96-MISCELLANEOUS MANUFACTURED ARTICLES	75	1,581	20,568	18,995
62-APPAREL ARTICLES AND ACCESSORIES NOT KNIT ETC	403,622	470,859	213,781	247,873
41-RAW HIDES AND SKINS (NO FURSKINS) AND LEATHER	150,869	134,866	71,263	46,997
20-PEPPER VEGETABLES FRUIT NUTS OR OTHER PLANT PA	173,561	89,186	52,201	76,239
26-ORNS SLUGS AND ASH	4,846	20,290	5,695	27,167
43-FISH CRUSTACEANS & AQUATIC INVERTEBRATES	185,180	238,661	60,543	81,510
44-WOOD AND ARTICLES OF WOOD WOOD CHARCOAL	218,352	153,877	1,639	1,639
28-INORG CHEM. PREC & RARE EARTH ETC. RADIATION C	92,984	82,668	47,864	28,969
86-RAILWAY OR TRAMWAY STOCK ETC. TRAFFIC SIGNAL E	10,994	31,940	8,249	25,444
70-GLASS AND GLASSWARE	69,999	46,671	13,506	32,328
69-CERAMIC PRODUCTS	96,433	123,243	67,463	26,806
31-FERTILIZERS	14,368	102,195	54,083	95,455
71-NAT ETC PEARLS PREC ETC STONES PR MET ETC C	6,274	99,253	36,682	45,116
10-CEREALES	858,398	95,547	434,661	427,027
47-PULP OF WOOD ETC. WASTE ETC OF PAPER & PAPERBO	291,044	278,637	158,658	151,511
39-ARMS AND AMMUNITION PARTS AND ACCESSORIES THE	1,758	1,584	1,035	1,345
19-PEPPER CEREAL FLOUR STARCH OR MILK BAKERS WARE	19,046	20,072	11,691	6,291
95-TOYS GAMES & SPORT EQUIPMENT PARTS & ACCESSO	27,451	129,792	61,458	66,083
15-ANIMAL OR VEGETABLE FATS OILS ETC & WAXES	168,335	211,651	125,237	120,828
36-EXPLOSIVES PYROTECHNICS MATCHES PYRO ALLOYS	11,677	5,341	1,503	469
42-LEATHER ART. SADDLERY ETC. HANDBAGS ETC. OUT A	2,167	34,869	34,236	37,691
61-APPAREL ARTICLES AND ACCESSORIES KNIT OR CROC	25,775	86,474	116,262	119,581
92-MUSICAL INSTRUMENTS PARTS AND ACCESSORIES THE	16,530	15,461	7,791	4,042
73-TEXTILE ART NESOI NEEDLECARD SETS WORN TEXT	110,950	83,401	35,847	38,410
39-FURSKINS AND ARTIFICIAL FUR MANUFACTURES THE	3,840	7,919	3,795	1,400
05-PRODUCTS OF ANIMAL ORIGIN NESOI	29,247	25,019	15,828	10,547
55-MANMADE STAPLE FIBERS INCL YARNS & WOVEN FABR	31,546	33,046	15,612	13,526
11-MILLING PRODUCTS MALT STARCH INULIN WHL GLT	64,605	54,790	39,000	31,089
82-TOOLS CUTLERY ETC. OF BASE METAL & PARTS THERE	47,273	31,572	41,463	39,780
14-VEGETABLE PLANTING MATERIALS & PRODUCTS NESOI	24,646	34,338	13,862	15,532
35-HEADGEAR AND PARTS THEREOF	27,551	35,499	19,033	20,532
17-SUGARS AND SUGAR CONFECTIONARY	38,010	23,156	10,511	9,197
57-CARPETS AND OTHER TEXTILE FLOOR COVERINGS	50,619	43,327	33,298	32,021
31-CLOCKS AND WATCHES AND PARTS THEREOF	10,877	868	1,683	446
90-TIN AND ARTICLES THEREOF	15,567	4,214	4,963	3,769
46-IMPR OF STRAW ESPARTO ETC. BASKETWARE & WICKE	2,667	2,100	1,161	1,261
50-SILK INCLUDING YARNS AND WOVEN FABRIC THEREOF	1,076	245	702	727
01-LIVE ANIMALS	146,012	323,630	134,319	134,494
53-VEG TEXT FIB NESOI VEG FIB & PAPER YNS & WOV	238	1,960	30	142
29-ORGANIC CHEMICALS	543,287	567,285	602,800	362,107
66-UMBRELLAS WALKING-STICKS RIDING-CROPS ETC P	1,000	1,145	1,400	1,195
07-EDIBLE VEGETABLES & CERTAIN ROOTS & TUBERS	653,399	885,173	674,648	674,383
45-CORK AND ARTICLES OF CORK	1,201	968	157	576
51-WOOL & ANIMAL HAIR INCLUDING YARN & WOVEN FAB	1,863	2,855	11,743	11,285
06-LIVE TREES PLANTS BULBS ETC CUT FLOWERS ETC	1,462	4,521	7,856	1,050
67-PREP FEATHERS DOWN ETC ARTIF FLOWERS H HAIR	1,499	8,979	1,576	340
22-BEVERAGES SPIRITS AND VINEGAR	187,121	184,443	96,766	94,766
75-NICKEL AND ARTICLES THEREOF	0,030	464	3,649	5,475
64-FOOTWEAR GAITERS ETC AND PARTS THEREOF	123,468	115,205	56,840	54,869
68-ART OF STONE PLASTER CEMENT ASBESTOS MICA	0,116	42,666	21,386	19,185
59-IMPREGIATED OR TEXT FABRICS TEXT ART FOR INDU	90,619	50,381	25,524	28,113
60-KNITTED OR CROCHETED FABRICS	14,962	12,601	7,300	10,071
56-WADDING FELT ETC SP YARN TWINE ROPES ETC	136,622	154,584	80,221	83,264
76-LEAD AND ARTICLES THEREOF	25,187	13,146	6,480	12,945
81-BASE METALS NESOI CERMITS ARTICLES THEREOF	1,241	2,119	1,957	1,586
13-LAC GLASS RESINS & OTHER VEGETABLE SAP & EXTR	9,081	10,052	4,653	8,417
89-SHIPS BOATS AND FLOATING STRUCTURES	25,378	19,540	12,095	16,994
59-SALT SULFUR EARTH & STONE LIME & CEMENT PLA	101,702	60,554	31,649	28,652
79-ZINC AND ARTICLES THEREOF	42,401	68,987	45,505	40,354
35-ALUMINUM SUBST MODIFIED STARCH GLUE ENZ	5,863	1,007	35,723	41,155
40-RUBBER AND ARTICLES THEREOF	321,434	200,103	153,427	158,955
34-SOAP ETC WAXES POLISH ETC CANDLES DENTAL P	49,909	44,975	19,751	25,445
58-SPEC WOV FABRICS TUFTED FAB LACE TAPESTRIES	55,314	46,169	31,042	38,558
18-COCOA AND COCOA PREPARATIONS	16,120	24,481	5,345	14,186
74-COPPER AND ARTICLES THEREOF	59,993	74,092	44,907	55,741
97-WORKS OF ART COLLECTORS PIECES AND ANTIQUES	9,511	9,180	5,569	5,658
98-SPECIAL CLASSIFICATION PROVISIONS NESOI	469,442	170,730	214,005	118,712
37-PHOTOGRAPHIC OR CINEMATOGRAPHIC GOODS	33,161	40,966	28,888	42,760
54-MANMADE FILAMENTS INCL YARNS & WOVEN FAB	121,083	134,811	62,010	77,082
49-PRINTED BOOKS NEWSPAPERS ETC MANUSCRIPTS ETC	115,945	163,111	72,748	89,045
39-PHARMACEUTICAL PRODUCTS	60,772	83,269	42,759	60,213
23-FOOD INDUSTRY RESIDUES & WASTE PREP ANIMAL FE	281,617	211,446	113,686	133,106
21-MISCELLANEOUS EDIBLE PREPARATIONS	67,413	82,943	30,343	55,045
16-EDIBLE PREPARATIONS OF MEAT FISH CRUSTACEANS	16,289	57,932	15,989	37,242
83-MISCELLANEOUS ARTICLES OF BASE METAL	297,997	297,367	146,641	170,478
88-INURCAFT SPACECRAFT AND PARTS THEREOF	118,985	420,924	283,577	309,466
33-ESSENTIAL OILS ETC PERFUMERY COSMETIC ETC PR	100,192	132,361	60,840	86,699
24-TOBACCO & MANUFACTURED TOBACCO SUBSTITUTES	10,542	1,627	6,292	20,471
52-COTTON INCLUDING YARN & WOVEN FABRIC THEREO	124,942	2,645	4,900	129,212
32-TANNING & DY ETC ETC DYE PAINT PUTTY ETC	128,114	136,221	11,214	96,457
38-EDIBLE FRUIT & NUTS CITRUS FRUIT OR MELON PEE	158,927	200,565	224,683	174,139
76-ALUMINUM AND ARTICLES THEREOF	347,422	513,124	165,427	228,365
38-MISCELLANEOUS CHEMICAL PRODUCTS	8,124	184,444	2,988	10,124
48-PAPER & PAPERBOARD & ARTICLES INCL PAPER PULP A	881,186	980,119	502,678	305,417
73-ARTICLES OF IRON OR STEEL	106,725	224,219	120,042	230,581
39-PLASTICS AND ARTICLES THEREOF	565,951	1,703,530	430,456	1,095,015

MBO Information Services and U.S. Dept. of Commerce, Bureau of the Census

The CHAIRMAN. Thank you, Mr. McMillion. Mr. Bergsten.

STATEMENT OF C. FRED BERGSTEN, DIRECTOR, INSTITUTE FOR INTERNATIONAL ECONOMICS

Mr. BERGSTEN. Mr. Chairman, your letter of invitation to this morning's hearing said that the hearing would be on the implementing legislation for the Uruguay Round, so I am going to address my comments to that. I have a lot of observations and thoughts on Mr. McMillion's remarks but I will hold those off for later discussion if you want to do them, and rather stress on the announced topic of the hearing which is the Uruguay Round legislation.

Unfortunately, the invitation to appear came too late for me to give you a prepared statement. But fortunately my institute has just completed a comprehensive analysis of the Uruguay Round. It is a book called "The Uruguay Round: An Assessment." We will be releasing it publicly in 2 weeks. I would be happy to give you advance copies now if you would like it.

It does follow a model we have used in previous assessments of the U.S.-Canada agreement 6 years ago, of the NAFTA 2 years ago, both of which I know were used widely in the congressional ratification discussions, and so we have tried to do the same now with the Uruguay Round.

The coauthors of that book, Jeffrey Schott and Johanna Burrman, are here with me today.

I always tell my authors that once they complete an extensive study like this the real challenge is to summarize it all on one sheet of paper, and they have done that. And lieu of a statement I have circulated to you that one sheet of paper which is a chart which gives a scorecard grading each aspect of the Uruguay Round deal, and a score for the overall deal itself.

We have broken down the negotiation into four different groups dealing with trade liberalization, trade rules, new issues, and institutional questions. We then in turn broke those down into their subcomponents, 13 in all. We give each one a grade against what we thought was a reasonable prospect for achieving U.S. goals in those negotiations, and then tried to draw a bottom line.

We obviously have lots of text and lots of material to back up the scoring, but in a short discussion like this I thought that might be a happy way to start.

The unambiguous conclusion of our analysis is that the Uruguay Round is a very good deal for the United States and should be passed by the Congress. We do not say it is perfect. We cite a number of weaknesses in it in our analysis, as you will see from our scores, some of which are not so great.

We conclude as well that the Uruguay Round leaves a lot of unfinished business in the world trading scene, and there I agree with some of the final points made by Mr. McMillion.

But the bottom line on the deal itself is that it is a strong B-plus, the Congress should support it, and we hope you will do so as quickly as possible.

Now, let me summarize the three main aspects of the agreement that have come up for some discussion. First, in terms of its impact on the economy, the Uruguay Round legislation is probably the most proconsumer piece of legislation to be considered not only by this Congress but by any Congress in the last decade.

We published a study earlier this year called "Measuring the Cost of Trade Protection in the United States." It concluded the current high tariffs, import quotas, and the like are still costing the American consumer something like \$70 billion a year. It may also disturb you to learn that those costs fall disproportionately on low-income Americans.

We did an earlier study on the quotas on apparel imports, for example, showing that they alone reduce the real income of the lowest quintal of American workers by a full 5 percent a year. Simply, the higher prices for apparel imports that are caused by the pre-existing quotas raise sharply the costs to our poorer citizens, and have a badly regressive income distribution effect.

But in aggregate we concluded that current protection costs about \$70 billion a year. Now, the Uruguay Round legislation will not get rid of all of that. It will cut it about in half. And our computation is that the American consumer will benefit to the tune of about \$30 billion per year from the reduction in trade barriers negotiated in the Uruguay Round.

I would say, with all deference to you all in the Congress, that is probably a bigger windfall benefit for the American public and particularly poor Americans than you are going to be able to generate in any other piece of legislation that you have considered in the Congress just dying, or probably most Congress' that will come to you in the future.

This Uruguay Round deal, incidently, is a far bigger payoff in this respect than the NAFTA or any of the previous negotiations that have been brought before the Congress and approved in recent years.

Second, the impact of the Uruguay Round on American jobs. Mr. McMillion raised some far-reaching questions about the impact of trade on American jobs. I think those need to be discussed and debated. But it is clear from our analysis that the Uruguay Round will help the picture.

Now, it is difficult to quantify a lot of aspects of the Round. What has been done on services and intellectual property will clearly expand American exports, but you cannot put numbers on those given the qualitative measure of the conclusions.

What we could do, however, was quantify the tariff cuts which, for all the talk about nontariff barriers, the tariff cuts are a very big part of this final deal. And there unambiguously they will increase the U.S. trade balance, improve our net trade performance, and create American jobs.

Our calculation is that they will grow our exports by the year 2000 by something over \$40 billion a year. They will increase imports by about \$20 billion a year. So, we will get a net improvement in our trade performance of about \$20 billion annually. That translates through to more than one-quarter of a million of those high-paying export jobs that Mr. McMillion referred to.

Now, the reason for that is simple. Why did we gain from the tariff deal? These are reciprocal deals. How could the United States be on balance a winner? Two reasons. First of all, our tariffs were already pretty low and foreign tariffs were still pretty high. We struck a good deal. Other countries reduced their tariffs from a much higher base than we did, so a like proportionate cut would

lead to a much sharper reduction in absolute terms of their tariffs than of ours, giving us a net advantage.

Second, the proportionate tariff cut, the percentage cut was actually a bit higher as it turns out on foreign tariffs relative to U.S. exports than on our import tariffs as a group. The foreign barriers to our exports came down by something over 40 percent on average. Our tariff cuts on our imports only amounted to about 32 to 33 percent. And so even in terms of the ratios we got an improvement in the deal.

So, point 1 was a big gain to consumers. Point 2 is a nice net gain in exports and therefore in job creation from the Uruguay Round deal as a whole.

I would stress that our calculations almost certainly underestimate these net effects because some of the important conclusions of the Round and aspects where we give it a high grade on our score card are in areas that could not be quantified and where the United States is very competitive—services, trade, intellectual property where American firms have been losing a lot of exports due to counterfeiting and piracy abroad. Those practices will be significantly reduced. That will provide additional benefits as well for the U.S. economy in the package.

The third and final issue I would address in my oral remarks is this famous question of sovereignty. There are some people who should know lots better who say that the Uruguay Round deal, the new World Trade Organization is somehow going to invade American sovereignty. That is a phony and incorrect argument, and you should know that.

It must be stated flatly again, neither the GATT nor the new World Trade Organization, nor any Uruguay Round can force the United States to change a law, a regulation, an implementation or anything else.

Now, what the new international rules can do is make us pay a price if we continue to maintain laws and regulations that are inconsistent with what has been agreed, including by us, at the international level. We do not have to pay fines, as it is sometimes put. That is not part of the deal. We are not even forced to pay compensation by cutting our duties or trade barriers elsewhere, though we have that option.

Other countries are authorized to retaliate against, block imports from us to a like amount if we maintain laws or practices that violate the international agreements, which I stress include our own agreement in the first place.

What you have to note is several things in practice. First of all, very few countries ever have or ever will retaliate against the United States. We just published another study called "Reciprocity and Retaliation in U.S. Trade Policy." It looks at every case in which the United States has used tough trade policy—super 301, section 301. It looks at every case of that to see what has been the outcome in terms of U.S. interests.

One conclusion was that in all the history of this reciprocity-retaliation talk, there have only ever been three cases where other countries have counter-retaliated against U.S. retaliation. In other words, it is not going to happen very often but it could happen. I do not want to mislead you on that.

The crucial point, however, is that the improvement in the international dispute settlement rules in the Uruguay Round agreement and the new WTO were promoted first and foremost by the United States. And the reason the United States, under three successive administrations included the current one, promoted the improvement of those international rules was because it will benefit the United States.

As I mentioned before, the U.S. economy is fairly open. Other countries have higher tariffs, higher barriers. We have gone after those foreign barriers time and again over the past 10 or 20 years. We have frequently won our cases in the GATT requiring the other countries to eliminate their barriers, but the GATT system has not effectively forced them to do so.

The United States therefore made one of its highest priorities in the Uruguay Round an improvement in the international trade machinery to get other countries to comply with the rules, and thereby open their markets to our exports when they were clearly demonstrated to be violating the rules, as happens time and again.

As you may note, in our assessment of the Uruguay Round package, we gave our absolutely highest score, a straight "A" to the dispute settlement mechanism that was agreed on in the Uruguay Round. Why? Because we think it improves the functioning of the international system, but more importantly for this purpose, because it promotes U.S. interests in getting foreign markets open to our exports so we will not be the guy with the most open market while the others maintain barriers. We can use the full weight of the international machinery to go after those barriers, reduce them, get them eliminated.

So, far from impinging on our sovereignty, the Uruguay Round deal enables us more effectively to increase our exports and improve our economic interests by getting foreign barriers down, and improving our economic sovereignty, if you want to put it that way, by being able to sell into world markets and exploit our competitiveness.

So, having gone through only three of the myriad issues, and giving you a synopsis of the rest, and there is much lying behind it if you wish, my conclusion is unambiguous. The Uruguay Round is a good deal for the United States. I strongly recommend to the Congress to pass it as quickly as possible.

Thank you.

[The information referred to follows:]

Table 1—Scorecard: Uruguay Round Results ¹

[By Jeffrey J. Schott assisted by Johanna W. Burman]

Area	Grade	Area	Grade
Trade liberalization (25 percent)		New issues (25 percent)	
Agriculture	B+	Services	B+
Textiles and apparel	B+	Investment	B—
Tariffs	A—	Intellectual property	B+
Government procurement	A—	Institutional issues (25 percent)	
Trade rules (25 percent)		Dispute settlement	A
Antidumping	C+	World Trade Organization	B+
Subsidies and countervailing measures	A—	Trade policy review mechanism	B+

Table 1—Scorecard: Uruguay Round Results ¹—Continued

(By Jeffrey J. Schott assisted by Johanna W. Burman)

Area	Grade	Area	Grade
Safeguards (incl. balance of payments)	B	Final Grade	B+

¹ Grades are based on the standard of how well the negotiators met the recommendations prescribed by the author in "Completing the Uruguay Round" (Schott 1990) for the most feasible and desirable outcome in each area.

The CHAIRMAN. Very good, sir. Thank you, Mr. Bergsten. Mr. Lind.

STATEMENT OF MICHAEL LIND, SENIOR EDITOR, HARPERS MAGAZINE

Mr. LIND. Thank you, Mr. Chairman. I am not going to talk about models. I have worked in Washington for 6 years, and I discovered that there are Republican models, there are Democratic models, and there are even a couple of Libertarian models scurrying around. And for the most part the models tend to end up saying what the people who paid for them wanted them to say in the first place, whether it is business or labor. So, I think you have to take that into account. If you want to see really pretty models, I say go to the Paris runway during the new fashion season.

I am approaching this from the point of view of the student of U.S. diplomacy and history because we are talking about strategy. We are not talking about abstract classroom economics. We live in a sovereign state system in which self-help in the economics sphere as well as in the military's sphere is the ultimate recourse of every state in the system.

And even a powerful state in the system like the United States has to keep in mind whenever it goes into any kind of international organization or agreement what the effects of this will be on the ability of the United States to resort to self-help when necessary.

Now, as it happens, we have 50 years of very good history of U.S. participation in international alliances and organizations to test out certain basic propositions. Let me take you for a moment back to 1944. That is when, under the auspices of Secretary Cordell Hull who is the founder of the modern GATT system and of modern trade liberalization—the State Department was coming up with these sweeping plans for reorganizing the world after the Axis was defeated.

Now, the key to this plan was supranational organization. The United Nations would assume the police and defense functions of many national governments. There would be an international trade organization which would assume what had formerly been national economic duties. And there were other organizations, the IMF, the World Bank, and so on.

Now, let us go to 1994. What are the two most successful international organizations that have emerged from the time that the State Department was planning the post-World War II order and the present? It happens to be two that no one had even thought of in 1944, NATO and the GATT.

The GATT only originated because the U.S. Congress, in my view wisely, defeated this grandiose scheme for an international trade organization after World War II. And as far as NATO, this was an idea of the British and the French in the late forties who were wor-

ried about a resurgence of German militarism. They came up with this treaty. This had not been foreseen.

They basically dragooned the United States into joining it. The United States was very reluctant about joining NATO initially. As I say, this was a British and French initiative.

The United States had this grand scheme. We were going to do all this through the United Nations and through subordinate regional organizations like the Organization of American States.

So, the lesson I draw from this is do not trust these grandiose, abstract blueprints for world organizations, because what actually evolves informally over time through negotiation by trial and error may reflect real interests, real opportunities, and real better ways to do things than something that was just sort of come up with on a blackboard. That is the first lesson.

We have the GATT which has evolved as a more or less informal organization. To my knowledge there has not been a formal GATT vote since 1959, if I am not mistaken. And one of the problems with the Uruguay Round is it proposes to replace this with this World Trade Organization, which is just a revival of the old international trade organization that was torpedoed in the 1940's.

Now, my question about this is, Why? You know, we have the old saying, "if it ain't broke don't fix it." Now, the United States has been fairly satisfied with GATT. In fact we have been so satisfied that we have initiated every Round. Historically the impetus has come from the United States. This has worked in our interest.

Why now do we want to come up with a world organization, and particularly a world organization in which power is not distributed on the basis of the actual weight of countries in the world economy?

So, the first lesson that I would draw from our postwar history is do not come up with some supranational organization if you really do not need one, if some subsidiary organization is working.

The second one is, if you are going to invent some new international organization, it has got to reflect the actual distribution of power or authority or economic weight in the world, and not this abstract juridical equality of states.

Now, if you want to see relatively successful international organizations that take this latter principle into account, you can look at the United Nations Security Council. You have the permanent members and have a veto. We do not decide to do things solely on the basis of the majority of states in the General Assembly.

Franklin Roosevelt made sure that U.S. interests would be protected in the United Nations by making us one of the permanent members with a veto.

Another approach is weighted voting, which we have in the World Bank. Now, it would seem to me that if we were going to decide just to scrap the GATT apparatus as it has evolved over the past couple of generations, something which I am by no means convinced is necessary, then at least we should have come up with some sort of world trade organization in which our recourse to self-help was protected by measures like weighted voting, by a U.S. veto perhaps, or there are any number of constitutional devices that could achieve this end.

Now, weighted voting, mind you, would not just have benefited us, it would have benefited the other major economies in the world. And let us face it, most world trade is between a few large, successful countries. The United States, Europe, and Japan together account for more than one-half of world trade. So, they are pretty much calling the shots anyway.

So, then why on Earth would you come up with a system of one-country-one-vote for major decisions in which Honduras can out-vote not only the United States but Japan and Germany? It seems to me if we had a system of weighted voting, then this would reflect the real distribution of economic clout in the international system, not necessarily forever to our benefit. It may very well be that 20, 50 years down the line maybe China will be the world's largest economy. Well, in that case they would have the largest share of the vote in a weighted system.

Now, my final point is the question of the world view and the philosophy here because I do think we can talk all day about the details and throw numbers at each other, but there is a real conflict of world views here.

One world view could be called globalism, and it is portrayed as the wave of the future sometimes. Actually, I think it is the wave of the past. It is kind of old 19th century, early 20th century Wilsonian utopia. And the basic idea of globalism is the world is evolving toward a single society with a single global market, a single currency, a single United Nations police force, or something to the equivalent of that, and this kind of world trade organization fits into that.

I am not saying that the World Trade Organization is going to usurp U.S. sovereignty, but I do think a lot of the people who promote these kinds of things hope to see sovereignty in the 21st to 22d century ceded to some kind of supranational authority.

You see, they view the United States as a kind of half-way house between this primitive past and this glorious science fiction future. And Strobe Talbott a couple of years ago in Time magazine wrote an essay in which he predicted we would have world government by the end of the 21st century, and the constituents of the North American part of the world government, formerly known as the United States, could take great pride that the U.S. Constitution had served as a model for this planetary utopia.

I think this is a very deeply rooted philosophy, and it is the only way that I can explain this kind of old 1944 idea popping up again 50 years later.

The alternative view—you can call it realism, you can call it nationalism. It does not view the existence of sovereign nation-states as some kind of primitive relic of tribal nativism or xenophobia or something. This is the goal of history. This is the best system. It is the way Churchill said about democracy, "it is the worst system except for all of the rest."

Any centralized global order, any global order at all that is a genuine global society almost inevitably will be tyrannical, directly or indirectly. It will represent one region, one race over the rest.

What we want is a world of sovereign nation-states organized internally democratically, which undergo a fair amount of trade among each other, but with each one of those sovereign nation-

states reserving rights to self-defense in the military realm, and rights to self-defense and self-help in the economic realm.

And if that is the goal we want, then there are many aspects of the Uruguay Round which are certainly in the American interest, but I think creating a new international bureaucracy is not.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Lind. Mr. Kearns.

STATEMENT OF KEVIN KEARNS, PRESIDENT, U.S. BUSINESS AND INDUSTRIAL COUNCIL

Mr. KEARNS. Mr. Chairman, I know it is pro forma to thank the chairman for holding these hearings, but today I really want to make a special point of thanking you. We can see, and the C-SPAN viewers can see today there is a lot of controversy about this GATT agreement and the World Trade Organization, a lot of different interpretations. And, you were courageous enough to go against the President and your Senate leaders to hold these hearings today. You are trying to air these issues to give the American people a chance to really look at the GATT and the World Trade Organization. The members of the U.S. Business and Industrial Council appreciate that.

I think I would like to say first that I am struck by Mr. Bergsten's books and his models and his charts. I think what we need to do is get outside Washington, get outside of the Beltway, get outside this battle of the graphs, and look at the central cities in our major States. We must look at the way the American people are feeling. I do not think all the charts or graphs in the world would say that the American people, after 20 years of more liberalized trade, or 45 or 48 years depending from where you begin to count, feel more secure and prosperous today. I think that perhaps the popularity of President Clinton in the polls, even though the economy is booming, is down because people are deeply concerned about their economic future. They are deeply concerned about the incomes that they receive. They are deeply concerned about wages and productivity being delinked, just as Mr. McMillion has pointed out.

I think there are two messages I want to convey today. First of all, we hear from the media that American business is uniformly backing the GATT deal. That is simply not true. The thousand members of the U.S. Business and Industrial Council have grave reservations about it: they are small- and medium-sized businesses; they are not multinational corporations; and, there are literally hundreds of thousands of other small- and medium-sized businesses, that have grave reservations about the GATT agreement and the implementing legislation to get this GATT passed.

I also have done probably 50 TV and radio talk call-in shows—in the last 4 or 5 months on this topic. I would have to say, although I know this is not a scientifically valid sample, that the calls run 20 to 1 from callers against the GATT and against a World Trade Organization. Sovereignty, jobs, the future of communities; these are the concerns of the American people. And I think it is almost scandalous that disagreement came up to the Congress with 3 or 4 days left in the session in the GATT, a 1,000-page bill, that you were supposed to digest and pass judgment on in that

very short order. And I hope it will not even be taken up in this lame duck session, in which has been called for consideration by both Houses. There is an awful lot of work that still needs to be done.

Now let me turn to the implementing legislation itself, and why my members are very uneasy with this. No. 1, it is a budget buster. We do have budget rules. We did have a budget agreement; it is a pay-as-you-go type of agreement. We are not supposed to incur losses without offsetting them. The GATT deal involves \$42 billion in revenue losses to the United States. The way the administration has chosen to make up those are \$12 billion in what I would consider smoke-and-mirrors financing and \$30 billion added to the deficit. You, Mr. Chairman, in the Gramm-Rudman-Hollings era, stood four square for getting our budget deficit under control. I know you became disenchanted with the process, and I think the reason for this was it was dying the death of a thousand cuts. Each time Congress wanted to do something to skirt around the rules, they did so. And that is what we see here today. The American people are asked, or are being asked, to bear \$30 billion in additional deficit spending. I think that is wrong. There are budget rules. The Congress has agreed to do it. The American people are aware of that agreement. We should stick by these rules.

Second, the implementing legislation contains sweetheart deals—for the Washington Post and Cox Communications, the owner of the Atlanta Constitution—regarding telecommunications licenses and wireless communications licenses. I would venture to say that almost no one, except for a few House Members who put this deal in the implementing legislation, knew or understood it was even there. It is simply wrong to create sweetheart deals that have nothing to do per se with the GATT and stick them in the implementing legislation. This implementing legislation needs to be fixed.

Let me turn to the issue of sovereignty. I do not think Mr. Bergsten understands sovereignty, or he could not have made the point he did in his statement. Entering into an international agreement, by definition, is accession of sovereignty to the international organization. It is an agreement to be bound by these rules. It is an agreement that prohibits your freedom of action as a sovereign state. So, the question is not whether or not we lose sovereignty. That is a given. The question is twofold: how much sovereignty do we lose? What do we get or gain in giving up our sovereignty?

I would suggest that the World Trade Organization is deeply flawed. As Mr. Lind has pointed out, it is one country, one vote. It is not weighted voting. Until, guess what, you come to paying for this organization, in which case the weighted system comes in and the U.S. taxpayer has to bear a significantly larger percentage of the costs of paying for GATT. The dispute resolution panels, which he lauds and he thinks are going to advance American interests, are, quite plainly, antidemocratic. We have fought long and hard in this country to protect our democratic principles and to refine our court system.

Here, we have what is probably an unconstitutional system: foreign judges not appointed by the President as the Constitution calls for, sitting in judgment on American companies and on American interests. And the notion that they are going to somehow

apply abstract rules of economics and everything is going to come out fine is utter nonsense. What is at stake is growth, is jobs, is incomes. And when you put them into the mix, these 120 countries, most of whom vote against the United States most of the time in the U.N. General Assembly, certainly are not going to be operating on abstract economic principles. It is going to be pure politics, and we are outvoted. There is no safety mechanism. There is no Security Council. There is no veto.

So, I think that our sovereignty certainly is at risk. And the proponents of GATT use this circular argument: Why are we doing this? Well, we are doing it for two reasons, so everyone can play by the same rules, every country will play by the same rules, and to lower tariffs. Well, you ask Mickey Kantor, and I saw him here before your committee last week, what happens if the United States is forced to change some law or regulation, or a State regulation is called into question? well, his answer is that the United States can just ignore it, and the most that can happen is we will get a sanction against us. If we can ignore it, 120 other countries can ignore it, too, so you are absolutely nowhere. I think at a minimum we should honestly say if we are going to go into this we agree to be bound by it, and we will change our laws and regulations accordingly.

The GATT Charter, the World Trade Organization Charter, is quite clear. It says no country may make any reservation about conforming its laws to this document, and it says all laws must be brought into conformity with the World Trade Organization and its rulings. I do not know what Mr. Bergsten does not understand about the word "no." No reservations means "no reservations." He seems to think that the tariffs that countries can sanction against us are no problem. But why are we doing this in the first place? Because he thinks tariffs are a problem. So, GATT proponents are caught in this kind of circular logic where they focus on points they like and try to push aside points they do not like.

I think that the figures that Mr. Bergsten gave also, this \$70 billion a year to consumers, the ideological free traders, the multinational corporations, institutes like Mr. Bergsten, have this great concern for the American consumer, and the poor consumer is now burdened with this \$70 billion a year. But I think that the most effective rebuttal of that was given by Sir James Goldsmith before your committee last week when he spoke about the social costs of broken homes, broken lives, spouse abuse, drug abuse, and kids acting up in school because their parents' marriages have fallen apart because they have lost jobs.

Mr. McMillion is quite right. We have run a trade deficit every year since 1975. International trade has cost the United States millions of jobs outright, and it has forced our workers down the job scale. We have lost millions of manufacturing jobs: these jobs are high-paying and are among our best jobs. These are the jobs that adversarial trade has affected, adversarial trade has destroyed, and guess what? We are not going to be able to get at the adversarial trade of countries like Japan and China in the GATT system. The nontariff barriers they use, the extended financing that are possible in the keiretsu or cartels in Japan, in China, in Europe, we simply cannot circumvent these through the proposed World Trade

Organization, through the GATT mechanism. These are the kind of trade barriers that are the problem today. They are not the tariff barriers. Tariffs have fallen considerably. We have heard all this nonsense before, when—after each successive GATT round, after the Tokyo Round—people like Mr. Bergsten were making the same arguments. But if you look at the \$150 or \$160 billion trade deficit that we are going to suffer this year, you cannot conclude that international trade has been this great boon to the United States. The argument is flawed.

Finally, I would like to talk about the U.S.-Canada experience, and the dispute resolutions that we have under the previous U.S.-Canada Free Trade Agreement, and the current North American Free Trade Agreement. We have a situation where, in the lumber case previously mentioned, we had at the trial court level one such dispute resolution process. Significant conflicts of interest are with two out of the five Canadians on that panel. They had links to 12 of the Canadian lumber companies involved. And on the appellate level we had two Canadian former judges and a retired U.S. judge. Of course, the Canadians voted 2-to-1 against the United States in this, and the U.S. judge wrote a heated dissent. He said this process is so flawed the Canadians on the appellate panel ignored the NAFTA, they ignored the underlying rules, they completely dismissed American administrative procedures—although they were required to do just the opposite. Plainly, they overran us and out-voted us based purely on economic interests.

I suggest to you, Mr. Chairman, that just that scenario is going to play itself out time and time again in the dispute resolution panels in the GATT which meet in secret, which do not publish minutes, which dictate that U.S. companies cannot choose their own lawyer—they have to have Mickey Kantor and the U.S. Trade Representative representing them there. And if you take a look at the administration's framework talks with Japan and what we tried to do in that situation, I consider them a failure, even though the results were announced with great praise and fanfare by the administration. The hard things did not get done. The items that really would have most significantly affected the American economy and would have helped it out were overlooked. Yet, Mr. Kantor thinks this is a great deal for the United States. Well, if you are a globalist, an internationalist like Mr. Bergsten, or if you think we got a great deal from Japan via Mr. Kantor, then you are the type of people who hat are saying GATT is a great deal for America. I do not think they know what a good deal is.

I would be glad to take your questions, Mr. Chairman.

[The prepared statement of Mr. Kearns follows:]

PREPARED STATEMENT OF KEVIN L. KEARNS

Mr. Chairman, I know it is pro forma etiquette to thank you for holding this hearing, but I do so today very sincerely. It took a great deal of integrity and courage to go against the President and the Senate leadership, and against conventional Washington politics-as-usual, to hold this series of hearings on the GATT agreement and its implementing legislation. But the questions you have raised about the negative effects of international trade on the American economy in general and GATT in particular are critical and deserve full hearings. To date the American people have seen only the so-called mock hearings and mock mark-ups, ironically a good name for them because they make a mockery of the democratic process. When almost everyone else in Congress was willing to participate in railroading through the

largely unexamined GATT agreement, you have brought rationality to the process. So I thank you for giving the American people additional time to examine a document that will affect their lives and livelihoods for decades to come.

In that regard there are several important points that I would like to make today that challenge the conventional wisdom. That's really what this panel is all about—getting to the truth about GATT, about trade and about the American economy and putting aside all the pro-GATT propaganda that one finds from the Administration, multinational corporations, academics, free trade ideologs and the media.

Many American Businesses Oppose GATT. First, let me address a mis-impression. Media coverage of GATT has created the illusion that all American businesses are solidly behind the GATT agreement. They are not. The members of the United States Business and Industrial Council do not back the current GATT agreement. They are joined by thousands more small and medium-sized businesses throughout the nation which have grave concerns about the GATT and the implementing legislation.

The Majority of the American People Oppose GATT. More importantly, in my opinion, a majority of the American people either are opposed to GATT or have grave reservations about it. In the last five months, I have appeared on a large number of radio and television call-in shows. The calls run about 20 to 1 against GATT. I realize that my experience is not a scientifically valid statistical sample. Yet, I believe that if a referendum were held today, GATT would be overwhelmingly defeated by the American people. That's the simple reason behind the House of Representatives' refusal to vote on GATT before the election.

(I might add parenthetically that I think that it was a craven and cynical calculation for House members to refuse to vote before the election. The American people have a right to know exactly where their representatives stand on this issue, an issue which as I said will effect their lives and livelihoods for decades to come. The members of the U.S. Business and Industrial Council believe that it is absolutely wrong to hold a special lame duck session of the Congress to consider the GATT legislation. GATT should be considered in the next Congress, beginning next January. Legislation of this magnitude should not be voted on by a lame duck Congress—which has at best questionable political legitimacy. We should be worried about the workings of democracy not only in places like Haiti, but also right here in Washington. I hope that all the television viewers of today's hearing will call their Senators and Congressmen and demand that they take a position on GATT before the election. That's the way democracy should work.)

Now let me turn to the reasons why opposition to GATT so widespread throughout the country:

1—*Budget Busting.* The GATT implementing legislation is a budget-buster. The United States will lose \$42 billion in revenue from the GATT. Under the federal budget law, the budget summit agreement of 1991, that loss must be made up with either tax increases or spending cuts. In the case of the GATT implementing legislation, the tariff cuts result in a revenue loss of about \$12 billion in the first five years. In addition, under the Rules of the Senate such proposals must meet budget neutrality in the second five out-years. Projected revenue losses due to tariff cuts in the second five-year budget window are \$30 billion.

The Administration proposes to meet the budget requirements for the first five out years by providing \$12 billion through what I would call smoke and mirrors financing, that is accounting tricks. Even if one buys that part of the financing package, there is still a \$30 billion shortfall for the second five-year budget neutrality window. The Administration will ask the Senate to waive the budget rules and add \$30 billion to the federal deficit. That's what Senators who vote for this GATT implementing legislation will be doing. They'll be busting the budget for the sake of this agreement and they'll be breaking a contract with the American people. The budget rules are supposed to impose discipline, to bind the Congress even when it doesn't want to be bound. This legislation is a make or break case for any member of Congress who has claims to support fiscal discipline.

Mr. Chairman, you were one of the original authors of the Gramm-Rudman-Hollings deficit reduction law. You became understandably disenchanted with the results of your efforts because the deficit was never eliminated. Instead, each time the deficit spending caps got a little too tight for political comfort, Congress raised the caps, extended the deadline for compliance, or otherwise weaseled out of the promise they made to the American people to reduce and eventually eliminate the deficit.

In our view, the pay-as-you-go feature of the 1991 Budget Summit deal may have been its only attractive part. It has been effective, up until now, in controlling federal spending. Recently, several waivers have been granted for disaster relief, for the crime bill and for other purposes. Mr. Chairman, I fear that the pay-as-you-go

law may die the same death of a thousand cuts that killed Gramm-Rudman-Hollings. \$42 billion is certainly a big cut. The Congress should either abide by the budget law, or be honest with the American people and tell them the law is a farce. My members can't run their businesses effectively by busting their budgets whenever they like; and the White House and the Congress can't run the country by busting the federal budget whenever they like.

2—*Sweetheart, Insider Deals.* Another troubling aspect of this implementing legislation is insider sweetheart deals for several large communications companies, which my members oppose. If you, Mr. Chairman, had not slowed down the GATT process, the American public would never have found out about these sweetheart deals buried deep in the GATT legislation. I don't know what else might be lurking there, but at least we now have time to find out. Under the guise of raising money to offset the tariff revenue losses, the Administration proposes to require those who purchase the rights to use airwaves for wireless communications to pay the government for the privilege. At the same time, wealthy and influential media giants, including the companies which own the Washington Post and the Atlanta Constitution, got special treatment for the purchase of these rights. This special treatment may cost the taxpayers as much as \$1 billion in foregone revenue. This Christmas-in-October sweetheart deal for the Washington Post is exactly the sort of special interest that enrages voters and fuels anti-Washington and anti-incumbent sentiment. It does not belong in the GATT legislation, or in any legislation for that matter. But since it cannot be stripped out according to the fast track rules, the implementing legislation should be withdrawn and re-written. Any Congressman or Senator who votes for GATT is also approving this inside the beltway sweetheart deal and should explain his or her rationale to the voters.

3—*Dangerous Patent Law Changes.* The proposed legislation will also endanger America's long-term technological leadership by changing the way America grants patents to the inventors of new technologies. Under pressure from Japan and big corporations, the Administration has included proposals in the trade bill that will significantly restrict the effective time length of patents for inventors. This change in the law, though seemingly minor, will have serious negative effects on America's future technological leadership. By "harmonizing" our patent system with those of Europe and Japan, the proposed change will significantly reduce the effective life of a patent, thus reducing its commercial value. This in turn reduces the patent's value in attracting investment capital and will reduce inventors' incentive to seek patents in the first place.

Burying important changes in U.S. law in the implementing legislation for GATT only engenders additional cynicism among the American people. We are concerned that the GATT implementing legislation is rife with other special interest deals we have yet to discover.

4—*Loss of American Sovereignty.* The GATT implementation legislation will make the United States a member of the World Trade Organization, a sort of United Nations General Assembly governing world trade. Only there is no moderating influence of a Security Council. The chartering document for WTO is only a few pages long, though I doubt one in ten members of Congress have actually read that charter. Among other things, it requires all member nations to confirm their laws, regulations, and administrative practices with the edicts of the WTO. It also says that no member nation may have any reservation with respect to any action the WTO takes. The WTO's legislative powers, and its final body of appeal, will be the Ministerial Conference. The United States will hold a single vote in the Ministerial Conference, the same as our new protectorate Haiti, or our long-standing enemy, Cuba. We will be outvoted by the European Union twelve to one. It is a mistake to believe that the WTO's Ministerial Conference will somehow act in the U.S. national interest when money, jobs, and trade are at stake. More than three-quarters the votes in the Ministerial Conference will be cast by nations that opposed the United States a majority of the time in U.N. General Assembly votes in 1993.

Before any trade dispute reaches the Ministerial Conference, it must run a gauntlet of dispute settlement bodies, which will deliberate in secret and the United States may not participate on any panel where it is also a disputant. Should any trade dispute be decided against the U.S., the United States would be faced with a Hobson's choice. It must either eliminate the offending U.S. law, cease the offending trade practice, or face trade sanctions (which may be levied against a product other than that involved in the dispute at hand) or fines levied by the WTO.

U.S. Trade Representative Mickey Kantor and other Administration representatives have contended that WTO will work to the benefit of the United States, giving American trade negotiators a new tool to knock down foreign trade barriers. At the same time, they also contend that WTO presents no threat to American laws, regulations and practices. Unfortunately, both of these statements cannot be true at

once. Either the WTO can force an offending country to change its laws and practices or it can't. We can't bind all other nations to the rule of the WTO and be excused ourselves. Further, according to Kantor and the others, U.S. economic might and political clout will allow it to circumvent any WTO action that is not in the U.S. interest. But the U.S. should not engage in any commitment it does not intend to honor.

One of the putative benefits of the GATT agreement is its reductions in tariffs. Ambassador Kantor's strategy to ignore WTO rulings with which we disagree will bring fines and new tariffs, a fact which Kantor admits—although with some difficulty. This approach to dealing with the WTO will clearly undermine one of the key advantages the Administration claims this agreement will bring. Thus, the Administration's rationalizations about WTO's non-impact on U.S. sovereignty are circular in every respect.

5—*The Benefits of Freer Trade Have By-passed America.* Although the same claims that are being made in support of GATT today have been made in support of previous GATT rounds, it is impossible to argue that the constant and persistent trade deficits run by the United States every year since 1975 under increasingly freer trade have made America a better country. It is far from clear that tariff reductions and other policies to encourage freer trade are truly beneficial to the United States. My colleagues on this panel will elaborate on this point. Let me say this: the United States has not run a trade surplus since 1975. The trade deficit for 1994 is likely to be the worst in history. Those who tout GATT contend that exports create American jobs—20,000 jobs for each billion dollars in exports. Of course, they never talk about net exports, because the real fact is that international trade has destroyed many millions more jobs than it has created. One doesn't have to be an economist—in fact it's better if one isn't—to understand that if exports create jobs, the inverse must also be true—that imports displace or destroy jobs. In order the have any net job gain from trade, we must run a trade surpluses, something we have failed to do for nearly twenty years.

In spite of these many serious problems with the GATT legislation, why are large-scale American businesses supportive of the GATT? American multinational businesses like GATT because they are run solely for the benefit of their shareholders. They are not run in the best interests of the communities in which they are located or even the United States as a whole. The officers of these multinationals—who incidentally are often large shareholders as well through stock options—wish to be free to move plants and jobs around the world, unhindered by any loyalty to employees or communities.

The members of my organization have a different perspective. They own and manage their businesses. They live in the communities where the businesses are located. In many cases they know all their employees by name. If they have to lay off employees because business conditions so dictate, they can see for themselves the devastating effects in broken lives, broken homes, broken dreams.

It is this perspective that propels them to oppose GATT. They know that although America's exports have increased in the last twenty years of freer trade and falling tariffs, those exports don't tell the real story. What we really have exported is growth, jobs, opportunities, and better lives for the American people. The goal of the American economy is not, as the free traders would have it, the lowest price for the consumer. As Sir James Goldsmith said before this committee last week, it's the prosperity and stability of the entire country. It's time for the Congress to take this legislation off the fast track and to examine it fully before sacrificing the prospects for America's economic future on the altar of GATT.

Thank you for your time and attention. I'd be pleased to answer any questions you might have.

The CHAIRMAN. Thank you, Mr. Kearns. I hasten to comment relative to this so-called lame duck session that we have been put into. I was surprised as anyone else. The fact of the matter is that on the GATT we have until July 1995, the middle of next summer, to approve it, no industrialized country has considered and approved it as of this minute, and I really felt very strongly, as have others including Laurence Tribe from Harvard, that this agreement should be treated as a treaty under Article I, Section 8 of the Constitution which grants Congress the power to regulate foreign commerce.

Mr. KEARNS. Yes, sir.

The CHAIRMAN. And I am about to cede that regulatory power to an entity out there in Geneva where we will be subjected to one-man-one-vote. I thought we needed full discussion, and we needed at least a two-thirds vote as required for ratification of a treaty. I was confident, since they had not called a session relative to health care or health reform or welfare reform, or for the telecommunications superhighway, that they would not call a lame duck session for GATT. I had looked at the rules and I knew we could come back in at the first of the year and discuss it in a deliberate fashion.

We do not have that opportunity now. Senators were anxious to go home, and in that light I am very grateful to Senator Pressler and Senator Stevens for being with us, and I welcome any others to be at the hearings on tomorrow, Monday and Tuesday. We faced a difficult situation creating a lame duck session in that the majority leader said, "Well, we know the rules, allow us to come in every day, the chaplain will give the prayer, and then I will move to adjourn," since as majority leader I am to be recognized first. And we will come in the next day and the chaplain will give the prayer, and I will move to adjourn.

Mr. KEARNS. That is going on now; right?

The CHAIRMAN. Well, no. That is not going on because we made an agreement. He said, "Now, I can do that even Saturdays and Sundays and we will run out our 45 days about November 11. Why do I not do it just for 5 days and not the Saturdays and Sundays and give you a little bit longer time until November 30?" So, that is why I agreed not to put us through this nonsense of appearing and me trying to get a rollcall vote and raise a point of order and all of those shenanigans. I think the people of America are sick and tired of all of this parliamentary maneuver up here anyway.

So, we agreed as gentlemen that we would just go out and I would not raise these points and he would not have to move to adjourn, and we would just all come back on November 30. But Hollings does not have the power to get a lame duck session. The President of the United States and the leadership do, and that is why we are coming back.

I would have welcomed the opportunity. We have got 6 months into next year to fully discuss, fully debate, and understand the wide ranging implications of this agreement.

Now about notoriety. I keep hearing that all I was doing was trying to get notoriety. I want the record to show that I had opportunities galore every weekend this year as the author of the information superhighway bill to be on weekend shows.

I have been in politics long enough to know how to work and how to build a coalition. I knew if I started getting on shows and asking these little smart questions, some point would be raised and we would get into a partisan debate as to who was leading this new technology and whose highway it was and all of that other folderol. And I elected to refuse every bit of that notoriety; namely appearances on the talk show circuit.

As a result, we have got a bipartisan information superhighway bill voted 18 to 2 out of this committee. And we have got a dozen Republican cosponsors, and we have all worked together, and it is everybody's bill, not just Democrats and Republicans. That is what I like to do in public service, get a result.

I yearn for the notoriety not for Hollings but for this issue. And in that light I am tickled to death we are sitting here today. And I have tried to get on the weekend shows, by the way. The will not have you, oh no. [Laughter.]

No, that crowd controls those weekend shows. I have even challenged our friend Rush Limbaugh. I am going to repeat that again and again until Rush comes back around and joins us. I think we can finally get him.

So, you enter the big leagues and face big money. But, Mr. Bergsten, I noted when the witness, Mr. Lind, was saying that we would hope to see some sovereignty ceded, that there are those who look for globalization and hope to see economic sovereignty ceded, you were shaking your head. I take it that is one thing that you would not like to see. Is that correct?

Mr. BERGSTEN. Obviously the United States, like any country, has to maintain maximum control over its own destiny, its economy, its society. We have to recognize that we are in a world of increased interdependence.

Some of the other panelists clearly do not like international trade, but I would suggest that it improves our welfare, creates jobs, is a net plus for the U.S. economy.

So, in some real economic sense we are no longer total masters of our own destiny because things that happen outside of our borders affect what we do.

Therefore, the policy task for us is to try to steer both that international economy and our role in it in a way that maximizes our national economic outcomes. That is what I think we should do.

I happen to think the Uruguay Round deal does it. I happen to applaud this broader discussion of the topic because I think the public does not understand it and needs to do so much more, but certainly cessation of sovereignty or ceding of sovereignty is not an issue. We as a Nation, and a great Nation are always going to do everything we can, and rightly so, to provide the maximum number of jobs, income, high wages, and competitive success for our own people.

The CHAIRMAN. And ceding of sovereignty thereby is not any danger, and we should not fear for that economically?

Mr. BERGSTEN. No, I think I was saying to the contrary I would not want to cede our sovereignty. I do not think any of the international institutions that we are in cedes our sovereignty. I think we maintain full national autonomy in pursuing our interests in all of their organizations.

Having said that I will again repeat, the United States for at least 50 years, and I think to its profit, has been in the lead of trying to create and maintain strong international organizations.

Mr. Lind, in his creative reinterpretation of history, is just wrong when he says the United States must have liked the GATT because it was always leading new negotiating rounds in the GATT. That was precisely because we thought the GATT was inadequate and needed to be strengthened, for example through a better dispute settlement process in the Uruguay Round.

So, the United States has been in the forefront under administrations of all stripes, Democrat, Republican, right, left, you name it.

The United States has been consistent in that thrust for one-half century.

This is the 50th anniversary, it just so happens, of the creation of the so-called Bretton Woods institutions, the World Bank, the IMF. Mr. Lind is wrong when he says the GATT was not part of that process, the ITO was. Well, the GATT was the lineal successor to the ITO. It was all part of the same concept.

But the point is we have had 50 years now of history. There have been a lot of reviews now, including one that my own institute sponsored. I did not bring that book along. That is another book we have done.

Go back and look at this whole history and ask on balance how has it worked? It obviously has not been perfect. It obviously has not avoided all the world's problems. It obviously has not avoided all of America's problems. But on balance, virtually every assessment that I have seen has concluded this was a stunning success story.

Now, you are getting people elsewhere on the panel who basically do not believe in international exchange at all. Mr. Kearns says the GATT is a failure. It does not deal with the Japan problem. But then he denigrates the recent effort to deal with the Japan problem another way. He obviously does not think any of the alternatives are any good. He must think we should abolish international trade. I happen to think that would be a big mistake.

So, the record for all its shortcomings, for all its warts, I think on balance has been positive for us. It has not represented a cessation of our sovereignty. By contrast it has promoted both our economic prosperity and our international status in a broader sense.

The CHAIRMAN. I was trying to understand your comment that it was strengthening our sovereignty. That begs a question in my mind. I have always looked and listened and tried to learn at numerous hearings, not just at this committee, but in the Defense Appropriations Subcommittee and all the other committees we serve on. Our foreign policy, our national security is poised as a three-legged stool.

We have the one leg as a country, our values, and that is a strong leg. We are willing to feed the hungry in Somalia and try to promote democracy in Haiti. The second leg is military power, and we are the military superpower. And the third leg is that of economic strength, and that that is fractured.

Over the 50-year period now we have had to subordinate our economic strength to maintaining the alliance against communism. But now, with the cold war over, we have an opportunity here, to strengthen our economy, and be very, very careful that we do not yield or cede any sovereignty. And yet Mr. Lind was saying there are those who, with that globalized view, thought that that was inevitable, and I understood you to be one of those. Is that correct?

Mr. BERGSTEN. Incidentally, I have written a number of things along the exact same line of what you are saying. With the end of the cold war we can now devote more of our resources, more of our priorities to our economic strength and we should do that, and I would profoundly hope that we do.

Maybe the problem is the definition of the term "sovereignty." When I made my original comment, I had in mind something that

in a sense goes beyond what you were saying. I would define "sovereignty" as in part at least a country's ability to get its way in the world.

If you are a sovereign power it seems to me you want to be able to project your power onto the world scene and get changes in other countries around the world as a whole that benefit you.

The CHAIRMAN. How do you do that with 1 vote in 117?

Mr. BERGSTEN. Well, that is exactly what I was going to come to. The United States has taken the view for 50 years, and I think rightly so, that institutions like the GATT, like the IMF, et cetera, are helpful in pursuing our international interests and getting other countries to conform to the kinds of things we want them to do.

It is a myth that the United States can force other countries to do its will. It actually was always a myth. It is particularly a myth now at the end of the cold war.

We are the biggest and strongest single country, but as negotiation after negotiation in recent years show we cannot force others to do our unilateral will, particularly if they are big fellows that we have most of the trade with, as Mr. Kearns said.

So, these international institutions, if their rules promote our goals and if their mechanisms effectively implement those goals, they help us and do not hurt us.

Now, what is the evidence in the GATT? The evidence in the GATT is the United States has brought more cases to the GATT than any other country. The United States has won more cases in the GATT than any other country. The rest of the world in fact—this may surprise you, Mr. Chairman—the rest of the world views the GATT as an American tool. The rest of the world views the IMF as an American tool.

It is always interesting to me, because I deal with a lot of countries around the world, to see the contrast between their views and what I often hear here in the halls of Congress. There is obviously some truth in both.

But an objective appraisal would say that the GATT was largely written by the Americans and the British after the war. It has been amended, updated, and expanded because of initiatives by the United States, as Mr. Lind pointed out.

And so it in large part does reflect our values, our norms, our procedures. They are not perfect. I agree they need to be improved in a number of respects. But on balance, we win.

Now, what about one-country-one-vote? Mr. Lind made the point. There has not been a vote in the GATT since 1959. There is not going to be anything different in the WTO. It does not work by voting. It works by a consensus arrangement which, to tell the truth, is managed by four—the Quads, the U.S.-Japan-European Union, and Canada. Those countries have to agree if any major steps are going to be made, that is true. But, as Mr. Lind said, no votes. I do not anticipate votes in the new institution. Rwanda is not going to outvote the United States. It does not work that way.

You have to be able to get a consensus on your side, and with the new rules as pushed by the United States no single country like Japan will be able to veto a market opening requirement under

the international rules that would apply to it. So, on balance, it seems to me we gain.

The CHAIRMAN. Do you have to leave now?

Senator STEVENS. Mr. Chairman, I must leave. Having been absent last week I have a series of appointments to catch up with. I will be back with you tomorrow.

My parting comment would be that I continue to be amazed by this procedure. You know, a majority of the Finance Committee get together and they send to the Presidency a proposed bill to ratify an agreement like this. And the Office of Management and Budget and others add provisions to that, and when that bill comes back up here it is not amendable.

We cannot have the debate these gentlemen are having right now. We can talk about it, but we cannot effectively deal with this bill.

I raised the same point on NAFTA and many people agreed with me, and we were promised a hearing on the subject but we have not had one yet. I still am amazed that it is a constitutional process. I do not think it is a constitutional process. I argued and raised the point on the NAFTA, as you remember, on the constitutionality of the process.

Let me tell you, gentlemen, WTO would never pass the Congress in a bill standing alone. I think you would all agree with that. This is a treaty that was made into an agreement to get the House on board so we could pass something that would never pass the Senate under a treaty process by a majority vote in each House.

And I find, from the point of view of sovereignty, there are things in here that just emasculate the small States. We have no voice. We have no ability to deal with it. My State is 99 percent small business in terms of employees, they work for small business, Mr. Kearns, and your point of view is very valid with regard to a State like mine.

I am sorry I cannot stay. I will be back tomorrow morning.

The CHAIRMAN. Very good. I appreciate it very much. And I will yield here in a moment. Mr. Lind wanted to comment and then I will yield.

It seems that Mr. Bergsten, writing just a year ago in the Economist, and I quote, you say: "The most sweeping change over the next 150 years could be the voluntary ceding of economic sovereignty to that world economic organization. More and more countries, including the largest, would recognize that their real sovereignty had long-since given away to global interdependence." That article is entitled, "The Rationale for a Rosy View." You were enthused about it. You hedged today. I think I know where you are coming from, but let us hear Mr. Lind, because you had a lot of comments.

Mr. BERGSTEN. I'd just say one word.

The CHAIRMAN. Yes, sir.

Mr. BERGSTEN. No hedge, I said it could be over 150 years, and I stand by that. I thought you were talking about today in the United States, and I stand by what I said on that.

The CHAIRMAN. I talked about the direction and asked about the threat itself and trend and—I have got to rollcall some other items.

Mr. Lind.

Mr. LIND. Well, let me say first of all that I think this brings out the basic philosophical difference. It is not over whether you favor trade or not. In mischaracterizing our views, Mr. Bergsten suggested that if we are opposed in essence to the World Trade Organization, well then from that he infers that we are opposed to world trade, so we want to have some completely autarchic economy like Romania used to be under the Ceausescu's or Albania or something. It is nonsense. The debate here is over a particular organization of world trade and whether that is in the national interest of the United States. It is not between autarchy and free trade.

Now, there are certain ideological proponents of free trade, whom I distinguish from the pragmatic and realistic proponents, who constantly want to change the subject from the actual details of a particular treaty or a particular organization to this level of abstraction. And once you raise it up to this level of abstraction, then it becomes a battle between good and evil, where good is free trade and it has got the term "free" in it. We are in favor of—well, except for free love, I guess, but most free trade, free lunch, we are in favor of. And then you have protectionism, tribalism, nativism, all kinds of isms over here which are bad.

I think we need to keep this focused on the particular details of this, and just for the record, I think a lot of the Uruguay Round's approaches to reducing tariffs on behalf of American communications industries, protecting intellectual property, agriculture, this is all fairly reasonable. And in fact, as I understand it this was the original charge of the negotiation. It was not to come back with this elaborate grandiose new international organization.

Now, on that point, Mr. Bergsten says that I am wrong in thinking that the GATT was really just the same thing as the ITO, which was defeated in Congress, and in turn, from his earlier testimony WTO is not that much different from the GATT. Well, tell that to the Congress back in 1948, I believe it was, when they torpedoed this. This was a major discussion. They were not under the impression that there is no difference between these things and it is all one is just as well as another. Why are we having this debate today if any intelligent person can clearly see that there is no difference, really, and this is all just sort of blown out of proportion. There is a difference. We know this. And I think we should focus on that instead of trying to change the subject.

Mr. KEARNS. Could I just follow up for 1 minute, Mr. Chairman?

The CHAIRMAN. Yes. Yes, Mr. Kearns.

Mr. KEARNS. Mr. Bergsten, of course, mischaracterized my views. He oversimplified them. If you are not for the WTO and you do not like the results of the recent Japan trade negotiations, why then you are against trade altogether? And it is really refreshing to hear him oversimplify so much because all those books and studies he has are in this oversimplified mindset, as Mr. Lind has correctly pointed out. If you bring it up to this level of abstraction, and who could be against free trade?

The question is how does international trade work today? Does it work in the interest of Americans? Does it create, as Sir James Goldsmith said last week, prosperity and stability for all Americans in our society, or does it just boost the fortunes of that top 20 percent—the ones who run and own stock in multinational cor-

porations, while the bottom 80 percent of the population sees its real family income fall. So, this is what the debate is about. It is about the real workings, it is about the lives and the livelihoods of American people. It is not about abstractions.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Thank you very much, Mr. Chairman. Let me first of all say there is a generally accepted thesis among economists, I guess, at this time that free trade and free enterprise are beneficial to everybody who participates in it, if it is really free trade. Of course, a lot of people, they say free trade, that means our markets are open and theirs are not. But Sir James Goldsmith has suggested in his meetings here that regional trade is better, regional trade organizations are better, among countries that are of like mind or are synergistic, and he cites NAFTA and the Common Market. Now, I do not know if the old Hanseatic League in the 14th, 15th, and 16th centuries was considered worldwide or regional, but his arguments seem to run counter to the generally accepted free trade concepts that are thrown around by economists, and of course when I was in college the economists were still talking about state run and state involvement in enterprises and stuff as the ideal thing. They have changed, so maybe they have changed on this, too. But what about Goldsmith's argument that we really should be working for regional trade agreements instead of this worldwide GATT thing? Do any of you want to have a comment on that?

Mr. BERGSTEN. Yes. I would respond to that immediately by saying they need not be in conflict, and indeed for the past, again, 50 years have not been. The European Common Market has developed not only free trade within but a truly single market. If you want cessation of sovereignty, that is it. They have done it quite willingly. They thought it was to their advantage to do it, and they have done it at the regional level. That is a distinction from anything global. But that regional free trade has coexisted with this continued reduction of barriers on the global level, and so both have moved hand in hand. In fact, if you wanted to get into a long discussion of that, I think there has actually been a constructive kind of competition between regional groupings and the global system to reduce barriers and improve the prospects for economic progress and investment.

Note here in our own case, the U.S. Government simultaneously pursued NAFTA and the Uruguay Round. You may like neither one, or you might like one and not the other or whatever. But the U.S. strategy, again, three administrations, the first part of it, at least, approved by the Congress, was to do both. We had the U.S.-Canada agreement, we had NAFTA, President Bush talked about extending NAFTA through the Western Hemisphere, and there is going to be a summit in Miami in a couple of months to talk about first steps in that. So, I think the two go together. I do not think the Goldsmith critique goes fundamentally to that point as much as to some other things.

If I could, just real quickly, Mr. Chairman, because I have been sort of attacked here on a couple of points, just very quickly, a couple of the inferences from others on the panel was that I was spouting economic abstractions rather than getting into the details of the

real world. Every one of these books goes into the details of the real world. This one analyzes every single case in which the United States has used section 301, Super 301, other levers, to try to win market opening. It shows they have worked in about one-half the cases. It is a detailed case-by-case study. My own latest book on U.S.-Japan, which I think Mr. Kearns, at least in broad terms, must approve because I supported the goals of dealing sector by sector with Japan's barriers, it is the only way you can do it, went into a dozen sectors, found a pervasive series of Japanese protective practices that had to be gone after, very detailed, no abstraction, so that is on the broad point.

Mr. Lind raises an important question, and I think——

Senator PRESSLER. May I ask that you follow my line of questioning here, and later if you fellows want to argue about your books and get into an academic argument——

Mr. BERGSTEN. But this is a substantive point.

Senator PRESSLER. That is a good point, and I agree. When I get finished, the chairman will give you plenty of time.

Mr. BERGSTEN. All right.

Senator PRESSLER. You fellows can have a debate. And I am not putting you down, I just have a line of questions here that I want to pursue and the Sir James Goldsmith line.

Now, what is the worst-case scenario under the World Trade Organization for the United States? Could some of you think of one product today, show me an example of what would happen under one product today if all these countries ganged up on us, and then whoever is for the agreement tell me how the United States could recede from the agreement or something like that? What would be an example of the worst-case scenario today? Would it be on an agricultural product or a manufactured product or what?

Mr. KEARNS. Well, Senator Pressler, I think that we do not have to guess about future scenarios. We can just take a look at the operation of the U.S.-Canada Free Trade Agreement and the dispute resolution panels that have occurred under that agreement. The lumber case that I cited earlier where the Coalition for Fair Lumber Imports is now mounting a constitutional challenge to the dispute resolution panels is a real life example. This case certainly illustrates that there is not some sort of ironclad rule of economic laws that can be easily applied. It shows that the dispute resolution process is riddled with politics.

Senator PRESSLER. It is in that, but now you are assuming that would be true of the World Trade Organization. For lumber, what would happen? We would be exporting lumber to some Third World nation and what would happen? All the World Trade Organization would vote to put a tariff on us or something like that? Give me an example.

Mr. KEARNS. In this lumber case, the United States would be besieged by unfair imports, adversarial trade, subsidized lumber, from Canada.

Senator PRESSLER. Or it could even be maybe Africa or someplace, Indonesia?

Mr. KEARNS. Well, it could be. It could be the Far East.

Senator PRESSLER. OK, and then what would happen? The World Trade Organization would uphold the flooding of the U.S. market?

Mr. KEARNS. Correct, sir.

Senator PRESSLER. And then what would we do? But now, on the other side of this, then, could we recede from this ruling or something like that?

Mr. KEARNS. This is a little bit different case because it is the U.S. market that is under attack. What we did in the Canadian lumber case was levy certain duties to equal the prices and combat the Canadian subsidies.

Senator PRESSLER. I want an example of what the WTO could do with this specific product.

Mr. KEARNS. Well, I think the result would be the same. We would bring a dispute, not under a Canada-U.S. bilateral panel or a NAFTA panel as it were, but we would bring it to the dispute resolution process at the World Trade Organization.

Senator PRESSLER. And we would lose.

Mr. KEARNS. We would lose.

Senator PRESSLER. Now, the proponents of the treaty say at that point we could—what is the word—“recede” from the treaty? Help me out.

Mr. BERGSTEN. You could simply reject the decision that was made by the WTO.

Senator PRESSLER. OK, great. So, we would reject it, and then what would happen?

Mr. BERGSTEN. Then, if the other countries wanted to do it, they could retaliate against a like volume of American trade coming into their market. If we block 1 billion dollars' worth of lumber imports under some such scenario in violation of our international obligations as agreed by the WTO mechanism, the countries who are losing that 1 billion dollars' worth of sales to us could retaliate against our exports to them to the tune of a like \$1 billion. So, what we would have purchased is noncompetition with our lumber imports of \$1 billion at the price of losing 1 billion dollars' worth of our exports to the countries that otherwise would have bought our products. That would have been our conscious choice, a trade-off, a decision we would have made. That I think is the worst case.

Senator PRESSLER. If any of you can submit for the record very brief worst-case scenarios that you would see where we would be outvoted in the World Trade Organization and, on the other hand, if we can get out from under this somehow by this—there is a word for it. We are not going to accept the results or something like that. But how could a big country like the United States not accept the results without destroying the whole GATT agreement?

Mr. KEARNS. I think you are exactly right, Senator. We could not. That is the whole point.

The notion that Mr. Kantor advances is simply that in this case of the \$1 billion lumber example, we would simply bear that trade sanction which could be cross-retaliation that is allowed under the GATT. So, they could come on American electronics products or our most successful export. It would not necessarily be lumber against lumber. So, the net result of the situation is that American products are going to find themselves the subject of tariffs.

Senator PRESSLER. Now, Larry Tribe has said that Federal/State relations and interstate commerce will change a great deal in the United States, as I understand it. What is the worst-case scenario?

Would somebody give me the worst-case scenario that a State could suffer? Then we will have the reply of how that would be corrected. What is the worst-case scenario?

Mr. LIND. I think one worst-case scenario could be that you have a State which wishes to have some sort of health standards, say, higher than the national average, and this would be challenged as illegal according to the WTO rules. Then the Federal Government would have the obligation, as I understand it, under the treaty to strike that down presumably under the commerce clause or some other constitutional authority in order to uphold its international obligation.

Mr. KEARNS. There could be cases. Another one that comes readily to mind are things like State right-to-work laws that could be struck down as sort of an unfair competitive advantage for an American company operating in a State with a right-to-work law. The creation of an enterprise zone in the central city and the attraction of American-only businesses into that enterprise zone could be struck down as unfair to foreign competition which do not have access to that enterprise zone.

So, there are all sorts of things at the State and local level. Tax breaks that might be given to certain types of corporations that the State is trying to attract, high-technology industry for example, into the overall State particular region or zone could be struck down by the World Trade Organization as unfair competitive advantages for the American companies that would take advantage of that tax break or that enterprise zone.

Senator PRESSLER. What is the rebuttal to that? Let us say the State right-to-work laws. Let us say the World Trade Organization says that our State right-to-work laws are a violation of GATT. What do we do?

Mr. BERGSTEN. I do not believe—I would have to check this. My experts maybe can tell me. I do not believe that the GATT or WTO rules cover right-to-work laws.

There is an issue now that the United States and others have raised about the relationship between trade and labor standards that may come onto the future agenda.

I think the issue that has been raised here frankly is a red herring. It is not now part of the GATT or the WTO, the question of State right-to-work laws.

Senator PRESSLER. How about tax breaks for certain types of corporations?

Mr. BERGSTEN. One has to be very careful here because there are certain State practices that could be covered by the new GATT rules, the new WTO rules, but many of its provisions do not cover State and local governments. Again, that has been something the United States has tried to get in the past because the Canadian provinces or the German lender or others have been able to take steps that impeded our exports with impunity.

So, there has been a very careful process in the GATT negotiation as to whether State, local, provincial authorities would be covered. Certainly they are covered in some cases. I am not saying they are not in any. In those cases then I think what was outlined was correct. If those were demonstrated to have an effect on international trade, then what would come into play is the constitu-

tional authority of the President and the Congress to manage the international trade of the United States and that can be legitimately made subject to these international agreements.

So, I do not want to say it could never happen, only in citing examples we have to be very careful because the negotiators, through the history of this thing, have been very cautious.

Senator PRESSLER. Let me say this is an example I think of what people are nervous about or what we need to define.

I understand that the Japanese Government could charge that California was discriminating against Japanese banks because the overall level of taxes in California was higher than those applied to German and U.S. banks operating, shall we say, in South Carolina. You get into very complicated situations.

Will the World Trade Organization be passing judgment? They will be in a much greater extent.

Mr. BERGSTEN. On the issue of tax breaks, there is a whole part of this GATT in the past going back to the 1970's—it has been now modified in the new agreement—called the “subsidies code,” and it deals with the whole range of government subsidies to business that can unfairly affect trade. Again, the United States has been very much in the forefront of opposing those because other countries tend to do them a lot more than we do.

Tax breaks are regarded as domestic subsidies which are not counted as illegal or violating the international rule, but can be brought before the GATT if country X feels that country Y's tax break has had an adverse effect on its own economy.

So, there is no *prima facie* case. You have to demonstrate (a) that it is a real subsidy, (b) that it hurts you. It is not illegal to do it, but somebody could bring a case, and that could apply to a Federal Government tax break, the investment tax credit, or it could apply to a State or local tax provision.

Senator PRESSLER. Now, presently there is a 50-percent tax on U.S. beef exports going into Japan. What could we do about that? How would we tackle that problem under the World Trade Organization?

Mr. BERGSTEN. My experts should know that answer. I hope they do.

Senator PRESSLER. What would we do?

Mr. BERGSTEN. Well, going back a few years, Japan had virtually a zero quota on beef imports. The United States made a major effort all through the 1970's and into the 1980's to eliminate or at least liberalize that quota. After a lot of effort, the Japanese did agree to start importing certain kinds of beef, and our sales went up and we got a fair amount of sales.

The big effort in the Uruguay Round on agriculture as a whole, including beef, was to convert these quotas, like the Japanese beef quota, into tariffs, the so-called tariffication. Then with the notion that you would reduce those tariffs in part actually during the Uruguay Round itself, but in subsequent negotiations. You would make the barrier more transparent and then you would try to liberalize in the future. So, you did not eliminate the problem, but you have over a period of years in different ways, bilateral, multilateral, reduced it, given us some access, and I am sure that will still be high

on the negotiating agenda in the future to try to get rid of that whole 50-percent duty.

Senator PRESSLER. I just have a couple more questions here.

Now, section 301 is sort of feared in countries such as India and elsewhere, we are going to bring a 301 action and so forth. But as I understand it, we would lose the authority to bring section 301 actions in the World Trade Organization. That is my reason for asking about the 50-percent import duty on U.S. beef.

What weapon would we have? Let us say that the beef industry felt it was being discriminated against. They cannot file a section 301. What would they file or how would they go about getting relief?

Mr. BERGSTEN. My understanding is any U.S. industry can still file the section 301 petitions. The United States can still promulgate section 301 cases. There is no proscription or limitation on that.

What has happened—and again, this was at U.S. behest—was that the range of issues covered under the GATT has been expanded in the Uruguay Round agreement, including in the agricultural area where we are big exporters on balance, and so we wanted that to happen. So, now the provisions of section 301 which call for the United States to use the international dispute settlement mechanism, wherever it is available, will apply to a broader array of topics. Again, the judgment has been that that will help the United States win cases, getting access to foreign markets.

Now, yours is a different one. It is access to our own market. No, I am sorry. Yours is access to a foreign market. So, I think there will be no diminution in our ability to bring cases. Hopefully there will be an improvement in our ability to win our cases, which is the result-oriented approach everybody wants, because the international mechanism will now be more widely encompassing.

Mr. KEARNS. Senator Pressler, I do not think that is right. Companies, industries, and other bodies can file 301 cases and we can adjudicate them here, but then the results will be brought to the World Trade Organization.

One of our great losses in joining this World Trade Organization, which I hope we do not, will be the ability to act unilaterally. That is why the rest of the world signed up. Ultimately that is why the rest of the world signed up for the Uruguay Round. They were not interested in it, but ultimately they saw it as an ability to curb U.S. ability to act unilaterally to apply countervailing duty, anti-dumping law, section 301, et cetera. I do not have it here with me, but I can provide you a long list of foreign leaders who have stated that under the World Trade Organization regime, section 301 will effectively be killed.

So, my prediction would be there will be a number of cases brought forth. They will be adjudicated here. American companies will win. The foreign companies will then bring that to the World Trade Organization and the World Trade Organization will nullify section 301.

Mr. BERGSTEN. Senator, could we just nail the point down? It is very important. I do not think there is actually disagreement in our interpretation of the statute. We are both saying the United States can still act unilaterally. It can take a section 301 action.

Mr. Kearns is right, and that is what I said before. The WTO broadens the scope of issues covered in the international agreement. Another country could take us then into the WTO and claim we violated the international rules and could retaliate against us. We could still act unilaterally, like in the lumber case we went through before as an example. No disagreement. The United States can still act unilaterally.

It may now pay a price in terms of foreign reaction that it did not previously pay. Mr. Kearns is absolutely right. Other countries hope that will deter the United States from taking unilateral action, but there is no disagreement between us. The United States can still do so.

Senator PRESSLER. A final question. The national agricultural groups seem to be coming out for this agreement. It seems to me there are lots of arguments against it from agriculture's point of view. What are each of your interpretations? Why are the national agricultural groups coming out for this?

Mr. LIND. Could I address that?

This goes back to your first point about the law of comparative advantage and the agreement that free trade always benefits all parties.

Now, we have been hearing for several decades that industrial policy is bad. It punishes the consumer. Government is bad. The U.S. agricultural sector owes its success to Government. Let us face it. Since the New Deal we have price supports. We have massive technological investments in agribusiness. We have all kinds of export promoting measures.

So, the way I would interpret this is we have a Government-supported successful agricultural industrial policy. Of course, it wants to take advantage of export opportunities. It has the Government backing it up. Our agricultural sector is the equivalent of the Japanese manufacturing sector in this respect. So, I think free trade has nothing to do with it. If you are backed up by the Federal Government and the Federal Government is going to help you open markets abroad while it is continuing to subsidize you to an enormous tune at home, it makes perfect sense to me if you are agribusiness.

Senator PRESSLER. But it seems that the agricultural subsidies are being reduced under the two farm bills, as well as some of the—

Mr. LIND. But we are not moving anywhere near a free market in agriculture.

Mr. BERGSTEN. Senator, could I just add? Here Mr. Lind and I actually are on more similar ground. Some people accuse me of being a proponent, an active one, of industrial policy in my role as chairman of the Competitiveness Policy Council. I have advocated a lot of steps to support our competitiveness in that direction. So, I think what he said has a lot of merit to it on agriculture.

But the bottom line has to be kept in mind. The United States is a big net exporter of agricultural products, and that fact alone indicates that if you reduce global barriers to agricultural trade, we will on balance benefit. We will expand our exports from a much higher base more than we expand our imports. This is not to say there will not be some adjustment problems to some components of

agriculture, but on balance we gain from that in terms of jobs, exports, trade balance, and the like.

Mr. McMILLION. If I could just say—by the way, I have not wanted to seem like I was piling on is the reason I have been a little silent, but I would like to respond to several of your earlier questions at some later time.

If you look at the last page in my testimony, there is a table about the change in U.S. trade with Mexico over the last couple of years. You can see that most of those industries that had been advantaged by NAFTA are agricultural, bulk chemicals, really commodity types of goods. Those industries that have been disadvantaged, and disadvantaged in a very major way are typically our higher technology, our more complex manufacturing industries. I was really struck when I ran this table.

So, it seems to me that certainly in the short term there will be a nice little bump for our agricultural sector because American agriculture continues to be the most productive and effective in the world. As other countries become more capital intensive, then I would expect that that surplus would very rapidly disappear.

Senator PRESSLER. One final question on aviation imports and exports. Recently I visited Airbus headquarters in Toulouse, France and was impressed with the way they are cutting into our markets not only in the United States but also throughout the world. But there are charges that Airbus subsidizes heavily and engages in other practices that we would consider anticompetitive.

Now, what would happen to our aviation industry under this GATT treaty, and what would happen to Airbus' subsidies under this treaty?

Mr. LIND. If I am not mistaken, Airbus might be more vulnerable than the United States so far as the Pentagon and military procurement continues to give the United States an advantage. This has traditionally been the argument of the Europeans. This is just a blue sky guess, but their claim has been that the U.S. aviation industry has benefited from military procurement for one-half century and they need to have a civilian equivalent, which is Airbus, in order to have it be a countervailing force.

If I am not mistaken, it would be easier to go after those kinds of civilian subsidies than it would to go after national procurement policies.

Mr. BERGSTEN. You are absolutely right. Airbus is a heavily subsidized competitor. The Europeans have justified it now for 20 years on industrial policy grounds, infant industry grounds. They have given huge subsidies. They have protected the companies against exchange rate fluctuations. It has been a heavily subsidized industry.

They have felt very strongly about it. They have argued not only what Mr. Lind said, that the United States subsidized its aircraft industry and got an unfair head start, but also that you do not want one country or one company to dominate a world industry. That is a world monopoly, and so you better provide a little competition. So, they have had lots of arguments. They felt very strongly about it.

We have tried to resist it in a number of ways. When I was running the international part of the Treasury 15 years ago and the

first Airbus subsidy was given to Eastern to essentially buy Airbuses free of charge, I wanted to countervail against right on the spot and stop the practice then. Eastern Airlines and its president bled all over the White House, arguing that if we did not let them get the free Airbuses, Eastern would go bankrupt. So, the decision was made to let the Airbuses come in. I thought it was a mistake. It was permitting a huge new competitor to a highly efficient U.S. industry, but that is what happened.

Mr. McMILLION. If I might say, Senator, it seems to me that the principle concern with this new GATT round is not with the competition from Airbus but with the dissipation of production in the United States, whether it be Boeing or whoever. We have already seen an agreement now with China, as Boeing is promising to make China a world-class competitor in aviation.

This round of GATT will further prevent any preference given to American firms as has been given for the last 50 years for American firms in the very important aviation and the military procurement sector.

Senator PRESSLER. Thank you, Mr. Chairman. I would appreciate getting for the record the worst-case scenario with the specific product we have today under the World Trade Organization, some projection or suggestion that would really bring this thing to light, what could happen and how we could resolve it. Thank you.

The CHAIRMAN. Thank you, Senator.

When I listen to the answers given and wonder why we are in trouble, it is quite evident to this Senator in the fanciful talk about what you can unilaterally do. Yes, you can unilaterally cut your wife's throat and kill her. You can unilaterally do that. The law of murder does not prevent you from doing it, but you have got to pay the penalty, as if that were nothing.

We know and I am confident Mr. Bergsten knows as much about these trade booklets because he has read more of them than I have. But here is a report on the United States Barriers to Trade and Investment by the European Commission, page 12. "Section 301 contradicts GATT and is in violation of it," it says.

Mr. BERGSTEN. That is what they will argue.

The CHAIRMAN. They argue. That is the position they all take. If we got one-man-one-vote, you can forget about 301. It is not an argument. I have the booklet. Japan says the same thing. They know that 301 is in violation of GATT, and so the very tool that we get Mickey Kantor to use one week we want to get rid of the next week. That is the best way to characterize it. You can still use it, but it is in violation of GATT, so you are going to pay a penalty.

We are supposed to be leading the system rather than violating its rules. It is just as plain as it can be on your face. There is no use to argue around about it.

We can go down to the CAFE standards. We lost that case in the GATT. I have seen headlines in the media that we won it. Read it. Quickly, read the Journal of Commerce. We lost that one. The averaging requirement is in violation of GATT. We can go down all of these particular standards.

That is why when we tried to bring them in—and I can see Ambassador Kantor up there now at Marrakesh in April. They would not talk about labor rights. They would not talk about environ-

mental regulations. Financial services, the big winner, all they did was agree to continue to negotiate.

The President thought he could revive it in June in Naples at the G-7 conference. They said, "Thank you, we are going to go have a drink. We will see you later." Yet, he is supposed to be leading next month at APEC.

The headline in Business Week says "Japan Leaves U.S. in Dust." Yet, I have to read in the paper, they are all writing these little personal references now to Senator Hollings and they say, "Well, he has made wild statements like Japan is leading." I had not made just that statement. Business Week has that in their articles and headlines.

We have got to sober up and understand. I am not interested just in an isolated case, as the distinguished Senator is. Mr. Bergsten, I am interested in the economy as a whole. I do not like what we have. I know it is not working.

I listened to you witnesses when we had the Tokyo Round and we were going to cut consumer costs by \$10 billion and according to one study net \$700 million at the most. The GAO study said 100,000 jobs result were projected. They found at best 1,400.

I look around since that so-called wonderful Tokyo Round, and we get these Ambassadors to come to testify for the agreement, but, the don't say that we have lost 3.2 million jobs. The jobs that we are adding on are only part-time. The full-time jobs, they are taking home 20 percent less pay than what they were earning 20 years ago.

The President himself said in his news conference last week—and I have got it. I said get that immediately. You have got Ambassador Kantor testifying one way just this morning before the committee, but the President himself said these low-wage countries that we are in competition with have brought downward pressure on wages here in the United States. So, the President recognizes it. I wish he would follow through with it. So, we know that occurs to us.

We know instead when the Tokyo Round commenced we had a plus balance of trade, and since then we have had an outflow of \$1.4 trillion in wealth to finance these trade deficits.

I then appear with Secretary Reich—bless him—and he is talking about jobs, jobs, jobs. But I said, Mr. Secretary, you just wrote in "The Work of Nations," in your book, on page 95 that this coalition for GATT; namely the Fortune 500, has not created one net new job in 15 years between 1975 and 1990.

Since 1990 you can go down the list. IBM. They call it downsizing. Firing. We even had one Senator who thought it was wonderful. They were getting efficient. It looks wonderful to the stock market and profits managing but not with shuttered factories.

But I am talking about not a single- or worst-case scenario. The worst-case scenario, Senator, is one word, England. That is the way we are headed.

This more or less takes us from a trot into a gallop in the context—completing the thought on Secretary Reich, we are not crating good jobs. You have IBM firing 60,000, General Motors firing 71,000. Boeing—you just mentioned it, Mr. McMillion—28,000.

They call it downsizing. No. They are moving to China. The Chinese required that they build part of the planes in China. We are losing jobs, not just in textiles. We have the official study of the Wharton Econometric Forecasting, which predicts a loss of 1.3 million jobs. We are losing all the other jobs as well, high-technology jobs.

So, I am trying to say and ask at the same time all of these little studies you get and these booklets you put out and everything else like that, no, no.

You can just go to yesterday's USA Today, "Voters in a Stoning Kind of Mood." There is a deep-seated unease about the spotty recovery of the economy despite statistics suggesting otherwise. "I am more worried about my job every day. It used to be if you worked for several years for a company and kept your nose clean, you could be confident that you would have a job for the rest of your life. Now you can lose your job at any time," says Richard Law, 57, a Raymond, NH, medical technician.

That is the trouble. This Congress tells everybody outside the Beltway we are getting rich. We are creating jobs. Salaries are up. Why are you not smiling? That one sentence right there tells our dilemma. It is the economy.

We do not have a competitive trade policy. Yes, we willingly have been giving away the store as a result of the cold war to maintain the alliance. Now we have the opportunity to rebuild that economic leg and instead we tell American industry—and incidentally, that is what James Goldsmith said, and he is a chief executive.

You cannot blame the chief executives for never creating a new job here in this country because the policy of the Congress and the Government is to get the devil out of town. You can get rich and make your shareholders happy by moving your production overseas. You can go bankrupt if you stay here and produce in this country. That is the policy we have right now, and that goes for high technology, that goes for service jobs, and that goes for the new opportunity; namely the Pacific Rim where 3 billion people are being integrated into the world economy. That is where the market is.

So, if I have Bergsten Manufacturing, do I stay here in the United States or I get immediately out in the market out there and cut 20 percent of my volume cost very, very easily. In sales volume, I can cut 20 percent of it just from the salaries where you have these \$3 billion, most of them coming into the workforce unemployed. Those that are employed are making 2 to 3 percent of the salaries here in the United States.

You do not have to write books about it. Heck, I have written a book about hunger, but I never have written a book about trade. But it looks like I am going to have to write one to get the truth out.

But, Mr. Bergsten, what is your answer to that? You have told us all this before. You were a witness on the Tokyo Round, and you see where we are.

Mr. BERGSTEN. I see where we are and I share your philosophy about, as I said before, the need to reorient our whole national strategy toward the economic dimension. But I guess we may differ on why we got where we are.

We have a huge trade deficit. I probably called attention to that development in the early 1980's before anybody else when Reaganomics started to push us in that direction.

But I do not know anybody who would say that the big trade deficit is because of these GATT or other trade negotiations. The trade deficit is a function of broad macroeconomic forces. We save far too little here and invest much more, and so we import capital that requires a trade deficit. But more fundamentally we as a country have consumed more than we could produce. In a sense, unfortunately, the rest of the world was willing to finance us, pour huge amounts of foreign capital into our economy so we could run these massive trade deficits and, as somebody said, shifted from being the biggest creditor to biggest debtor country in the space of just a few years in the last decade.

The single greatest source of that problem—and it is one you tried to combat over the last 10 years—was the Federal budget deficit. When our Federal budget deficit soared in the first half of the 1980's, our trade deficit soared right along with it. The budget deficit, added onto the normal workings of the domestic economy, increased our total national consumption just way beyond what we could produce.

Where did we get the goods? We imported them. It was a trade deficit. What was the mechanism? The huge budget deficit put tremendous pressure on Federal financing. That drove up interest rates. That drove the dollar to a level that priced even our best firms out of world markets by 50, 60 percent. That is what happened. Those were macroeconomic forces.

With the corrections of the mid-1980's, our trade and current account deficit declined to less than 1 percent of our GNP in 1990. What has happened in the last couple of years is that we have led the world recovery. We have been growing rapidly. Our main markets have been mired in recession. The G-7 and the U.S. Treasury have been totally ineffectual in getting the rest of the world to join us in a global strategy. So, we have been out there growing. Others have not. We have sucked in imports. Our exports have stagnated.

In addition, we let the yen get way undervalued again in the late 1980's, and with the lag effect that occurs, 2 to 3 years, Japan is now running a bigger surplus than any country has ever run before in history. That has taken its toll on our deficit.

So, these are broad macroeconomic forces.

I am 100 percent with you that we have let the cat out of the bag. We have not minded the store. We have been incredibly profligate. One way it shows up in a trade deficit, but I do not think I would attribute much of that to the trade negotiations.

In fact, to raise what is a small part of this, I would go back to the Tokyo Round and say it did help us. It opened up government procurement to some extent in other countries. It did put some limits on the subsidy practices of other countries. It helped us, but it is very small fry in the big picture you are talking about which quite rightly has to be addressed as a national priority. It goes to the heart, however, of our fiscal policies, our overall industrial policies, and what we do to try to strengthen American industry.

The CHAIRMAN. Well, I want to recognize the others, but that Federal deficit; you are right.

But there has been a change not only bringing an additional \$3 billion into the market economy, but in this new era you also can transfer capital on a satellite. You can transfer technology on a computer chip. As a southern Governor I know you can produce anything anywhere in this world. That is hard to get through the Washington mind.

They do not come to Detroit to make a BMW. They come to Spartanburg, SC, and we have never produced a car. So, I put in the technical training colleges and the chairman of the board BMW said if you had not had that system, we could not have come to South Carolina. We have the skills and we are already producing BMW's. So, I know about creating high-skilled workforces.

If I can do it in South Carolina, you can do it anywhere out in the Pacific. Workers are very trainable down in Mexico. J.D. Power said that one of the most productive Ford plants in the entire system is not in Europe or in Detroit, it is down in Mexico. And we will get into the NAFTA in just a minute here.

But I see that all moving on account of a need to "get competitive."

We all know that the cost of labor is about 25 to 30 percent of volume. Now, if you have got Bergsten Manufacturing and you can save 20 percent of your volume by moving the production because of, the example given, the cost of 1 American worker for 24 down in Thailand, for 24 down in the Philippines, for 80 in China, or wherever else you want to locate, and India and otherwise, if you can get that number of workers for the cost of one worker and it is 30 percent of your cost of volume and you can save 20 percent, a \$500 million company can make \$100 million by, like I say, leaving the country, moving its production overseas, or stay here in the international global competition and go bankrupt by working their own people. That is aside from all of these macroeconomic and all of these other things.

Do I not ask myself, do you not ask yourself, why that GATT coalition crowd, the Fortune 500, has not created a net new job in 15 years? Does that not frighten you?

Mr. BERGSTEN. It does.

On just the two aspects of what you were saying, the production will shift to a foreign location if two conditions are met: if the share of the labor cost is high enough, your numbers on average. Of course, it is a lot lower in some sectors where it does not make a lot of sense.

The CHAIRMAN. There is no ifs. It is happening.

Mr. BERGSTEN. No, but let me get to that.

The second point is if the foreign labor is adequately high quality to do it. You talked about that in the South Carolina auto case.

The bottom line is the international capital moves in two directions. You are quite right. U.S. firms invest abroad. Absolutely right. But as your example of a BMW indicated, foreign firms invest here. We already talked about the fact that the United States has become the world's biggest debtor country.

If you want to put it this way, the up side of that is that the world has been pouring investments into the United States, including job creating direct investments. What you have is an intraindustry specialization. U.S. firms move some production

abroad, including auto firms. Foreign based companies move some production to the United States, including auto companies like you mentioned.

Mr. LIND. Because we are more low wage than they are.

Mr. BERGSTEN. But that is not his point.

The CHAIRMAN. Well, that is my point. It is \$30 an hour in downtown Munich and \$15 an hour in Spartanburg. I know what we are talking about. It is \$30 an hour in downtown Munich, \$15 an hour in downtown Spartanburg. That is the difference. That is why we are temporarily getting them.

Now, since NAFTA, Nissan, Honda, General Motors, Chrysler, Volkswagen, all the rest of them are moving down into Mexico. They have not announced any new facilities here.

We have sold, since NAFTA, 17,000 cars from the United States. We have imported 154,000. Look, I am going out of business. I have workers from 244 plants applying over there at the Department of Labor for economic assistance because why? Their businesses, their manufacturing facilities, have gone to Mexico, and I am being told I am getting rich with some kind of export statistics here.

Let me recognize—we will start around because they have been waving their hands. Mr. McMillion, then Mr. Lind, and then Mr. Kearns.

Mr. MCMILLION. Well, thank you. I did not want to pile on earlier, but I think I will now.

Your point earlier about wages is exactly right, and it speaks not only to the microconcern that you raised, but it also speaks to the macroconcern that Mr. Bergsten raised. That is, our savings shortfall in the United States is not because we have been spending too much. It is because we are earning in wages and profits too little, and it is very, very clear when you compare spending and investment over time. I do not know where Mr. Bergsten thinks investment occurred in the 1980's, because investment as a percent of GDP in the United States plummeted in the 1980's.

Consumer spending in the United States slowed in the 1980's. It slowed a lot in the 1970's. It slowed further in the 1980's. I know there is a lot of popular myth about yuppies driving BMW's, but there were a lot of people who were not yuppies who did not have a lot to spend in the 1980's.

Total spending in the United States dropped in the 1980's from an already falling level in the 1970's. Investment dropped big time. Even Federal Government spending even with the military buildup, Government spending dropped.

So, across the board what you see in the 1980's is not that the United States went on a spending binge, it is that wages collapsed. This is an issue that is really central to the models and the way that economists do their work. The first rule, of course, of economists is to make no small mistake.

In fact, I would even go so far as to say that the essential assumption of Mr. Bergsten's models—and they are models that have been developed throughout the cold war era—is that there is the assumption of a prosperous consumer market and unlimited demand. So long as you assume that there will always be people to buy your products, then you could certainly identify savings from

increased free trade. Clearly prices will be lower. The problem is that wages have been lowered more rapidly than prices, and that is the essential economic reality in the United States today and it is a reality which this new GATT round will make even more difficult to address.

Mr. Bergsten talks about marginal tariff cuts. Tariffs have come down over the last 50 years to a very low level in most countries and in most industries. I do not want to say that further reductions are not important because these days companies operate on a razor thin margin. So, if you can get tariffs down even 1 or 2 percent, that is important.

But the real issue driving international trade is not these 3- or 4-, or even 10- or 20-percent tariff rates. The real issue is the massive difference in the cost of production. And it is not only wages, although wages are very important. I used a high-technology example that a lot of American companies are using now in developing their most sophisticated software in southern India and Moscow and in other places. Of course, it goes across the board and wages are very important.

But other things such as health and safety standards add considerably to the cost of doing business. Such things as environmental regulations, and even such things as our antitrust laws in the United States now make it extremely difficult and costly to put together, as you know, Mr. Chairman, better than probably anybody in this room, complex, new, high-technology products in the United States where companies have to work together. They risk all kinds of antitrust litigation by doing that in the United States. They can go someplace else and avoid it.

So, it is all these other things that add enormously to the cost of doing business in the United States that are far more important than these relatively marginal tariff concerns that are the concern of this agreement and why this agreement is in the wrong direction.

What we need to be talking about is how does the United States lead the world economy in the postcold war period to an era of prosperity not only for us, but for the world. The issue is not sovereignty. Sovereignty is a very important issue, but the issue is not are we to become isolationists. The issue is what kind of cooperative relationships are we to have with the rest of the world.

The CHAIRMAN. Well, how do you lead if you are going to the APEC conference, as the President is next month, with a \$130 to \$150 billion hole in your pocket? Who is leading? Everybody was aghast—how insulting—at Naples that they did not even listen to President Clinton like there was something wrong with him. It is what he inherited from the previous administration.

I would hope I could open his eyes over there, but I think he gets the rationale that Mr. Bergsten brings to the issue. If you listen to Mr. Bergsten, you begin to feel good. I am rich. I do not know why we are having these hearings. Let us vote and pass this and get richer.

Mr. Lind.

Mr. LIND. Well, Mr. Chairman, I am glad you brought up this business of global labor costs.

Also we need to complicate the picture here. We have been talking so far as though you have this world of trade between countries and between companies clearly identified with countries. So, you have the American corporation here in America employing Americans, selling goods to Japanese consumers and so on. Well, a diminishing amount of world trade actually follows this model.

You have more and more world trade that follows the model you described where you have relocation of production in countries other than the country in which the corporation is chartered.

Now, in this respect, if I may indulge you with an anecdote. I was on the way to Singapore last spring. I sat on the plane next to an American electronics manufacturer. He told me that in Minnesota he used to employ 25 people. He now employs none. He has contracted it out entirely to Singapore because of the labor costs. It is not because they are any better workers and so on. It is because they are cheaper. He said what is more, he is now moving out of Singapore into south China because the people are poorer there. He says I do not want to do this. I want to employ Americans, but I have got a business unless I follow the competition.

He said the competition there was talking about Burma. Burma is the poorest country in the region and the theory among these manufacturers is once you get rid of SLORC, which is the military dictatorship that has been raping and terrorizing these people, these people will be poor. They will have no labor rights, no unions. They will be the perfect workforce for American manufacturers or Germans or Japanese once they get up to a certain level of skill.

Now, one more point about this. Let us keep the historical perspective here. With the end of the cold war, we decided that socialism was discredited, communism does not work, capitalism flourishes. Well, sort of. There are different kinds of capitalism.

Now, the sort of capitalism that flourished in the United States and in the European Community—and these are the models—and Japan too that discredited the Soviet alternative was modern welfare state capitalism where there were minimum wages, where there were worker standards and in the case of Europe more than the United States and the United States more than Japan where there was an organized labor power to check corporate rapacity.

Now, we have 500 years of another kind of capitalism in this Hemisphere. Mr. Chairman, you are a southerner and so am I and we are familiar with this. This is plantation agriculture. Now, going all the way back to Columbus and going back to Jamestown in North America, we have experience with a flourishing system of agricultural factories, of factory farming basically, where the economy booms, where the owners get rich, and where the vast majority of the people, first of all, were slaves for most of that period, and second, even when they were nominally free, were dirt-poor sharecroppers and agricultural laborers without rights.

Now, the concern of Mr. Goldsmith and of a number of us increasingly throughout the Western World is that we are seeing something that we did not imagine possible. That is the application of the old-fashioned Caribbean plantation agricultural model to industry. See, because we thought simply because Henry Ford paid his workers well that somehow this was some magical property of

capitalism or of industry that just sort of by the nature of things, making cars has to be done by well-paid workers.

Now we are finding out that did not have anything to do with capitalism or markets. That had to do with government regulations. You can have an unregulated capitalism in which the people are just as poor making high-technology products as the most degraded slaves ever were raising sugarcane or tobacco. I think this is at the root of the unease that is going on here.

To conclude with one final observation. The promoters of global free trade as this panacea for things say, "Well, there are natural low-wage industries and there are these natural high-wage industries. So, we will lose the low wage industries to Mexico or Malaysia, but we will make the high wage industries and then we will sell them our high wage goods."

There is no such thing as a high-wage industry or a low-wage industry. You know this from a textile State. You can have a clean, up-to-date robot plant that is manned by a couple of people. That can be the highest technology. U.S. agriculture is a high-technology industry. What is more, automobile manufacturing, aerospace. This can be a low-technology industry. You have people working in sweat shops in Central America doing little pieces of laptop computers and so on. It is a matter of investment.

So, I think we have to ask ourselves do the rules of world trade encourage corporations to invest in the first world, in the United States, in better technology which will benefit everyone down the long run, or does it discourage them because it is cheaper to exploit this group or that group of poor workers in the Third World. It is going to skip around.

If I can make one final comparison, this happened in the South too. There it was the soil. It was not the workers. You go in. The planters would plant their cotton. They would exhaust the soil and then they would abandon it and they would keep moving west. Well, I see a real parallel to the way multinational corporations since the 1960's have been going from one country to another in the same way.

The CHAIRMAN. Mr. Kearns.

Mr. KEARNS. Yes, thanks, Mr. Chairman.

I think maybe one solution to making Americans feel more secure is that the Congress ought to vote to give them each a copy of Mr. Bergsten's books. Clearly, if we all read them, we would feel very secure.

The economic gobbledegook that he is talking about today that savings rate and the Federal budget deficit, blah, blah, blah, and we brought in imports, et cetera, et cetera—it is really quite simple. You do not have to be an economist to understand it. Probably you have not to be an economist if you are going to understand it.

We do not need to import goods that we make here at home. When we lose industries through adversarial trade, through targeting, through refusal to stand up for economic interests, by not exercising countervailing duty laws, antidumping laws, section 301, et cetera, we lose these industries. We lose high-paying manufacturing jobs. We lose wealth in this country.

This is the link. When I watched Senate proceedings last week, Senator Danforth did not understand what the link was between

going into this GATT round, the decline of the American economy, and the resulting decline of American civilization. We need to create jobs here at home. We need to invest in America. We do not need our corporations moving jobs, chasing low wages around the world.

In 1950, one in three American jobs was a manufacturing job. Today it is one in seven. The manufacturing jobs not only paid well, but they also came with good benefits. To the extent that there is a health care crisis in this country, much of it is driven by manufacturing workers laid off, benefits packages cut, health care benefits that used to be provided through high-paying jobs.

We have seen adversarial trade in textiles, in autos, in ceramics, in other electronics areas, in steel, and in aerospace. This country, while claiming that free trade was the solution, has actually had free trade turned against it by other countries and by foreign companies. In many cases we ignored these attacks on our economy or even gave up chunks of our economy during the cold war for security reasons. We made a special attempt to bring Japan into the GATT. It was the unsinkable aircraft carrier to be used against the Russians.

None of this applies anymore, Mr. Chairman. It is a new world, as you stated, as Mr. Goldsmith stated. There are 4 billion new workers that are players in the world economy, and a strategy for a prosperous and stable America, for prosperous and stable family life is not to chase this panacea of lower tariff barriers under the GATT. This is not a coherent economic policy for our future.

The CHAIRMAN. I am going to let Mr. Bergsten comment if he wishes.

You said, Mr. Bergsten, when you started off, this was the finest proconsumer legislation. Right to the point, I am not trying to please consumers. I am trying to please producers. I am trying to build up my economic strength. That is why we started off with Jim Fallows. Whether or not you are from the David Ricardo comparative advantage, Adam Smith open markets, free trade school or whether you are from Alexander Hamilton and Friedrich List school, that assumes the wealth of a nation is measured not by what it can buy, but what it can produce, and there is the fundamental difference.

This bunch of politicians up here want to give away free lunches. I go back to Kennedy. He said, "My platform is not what I intend to give the American people. It is what I intend to ask." I can hear his Boston accent now in my ears. In 1960, what I intended to ask. The Government today is not supposed to ask. The Government is supposed to be an instant gratification. Consumers, you can buy things cheaper, everything. Nothing costs. I am against taxes.

You have a bunch of children coming into public office. Under the Constitution we have term limits yet people pledge to come up, to absolutely do nothing or, if anything, get rid of the Government, and by the way, not stay here and learn anything or do anything. It is the darnedest thing I have ever seen.

The biggest part—you mentioned—is the deficit. There is not a dime's worth of difference. You started off with Reaganomics. The majority of Democrats overwhelmingly supported Reaganomics. We have both been outpromising each other on cutting taxes, cutting

the revenues, creating the deficits, and we do not understand that while we got the deficit from \$370 billion down to \$270 billion, the \$270 billion according to Felix Roytan and all the better minds, has the greater impact now on us as a result of the need of \$1 trillion for Third World and capitalistic needs.

Otherwise, it is the matter of a defeatist kind of trade policy that we followed. The Government actually appeared against Zenith. You mentioned President Reagan. There was the finest technology, with Houdaille, an American company which sought relief against unfair foreign competition. Yet the President walked into the Cabinet room and he said "We got a special relationship with Nakasone in Japan and ruled against all the court rulings and all the Cabinet. You cannot blame industry. They come to Washington, yhey got these trade laws, but they spend 3 years, they go through all the courts. They pay all the lawyers, and they are going to lose anyway." So, you move overseas.

I see it again and again. I can name the industries that have left me and have come and said goodbye. They have said we cannot stay in business. It just does not pay. I have got to get ahead of the curve. I have got to get competitive.

We keep getting these brilliant economists like yourself coming up and saying, "Well, man, you are doing great. Now, this thing is not only working, you are going to get richer. It is the finest proconsumer law we could possibly pass."

Mr. BERGSTEN. Mr. Chairman, let me just remind you that I am fully in agreement with you on exactly your main line of argument now, that we have to be proproducer not just proconsumer. If there is any doubt, I refer you to the four reports that I have submitted to this committee and the Congress as a whole and the President as chairman of the Competitiveness Policy Council. I also refer you to my latest book on Japan, which I would recommend Mr. Kearns read instead of just diatribing against it.

The point is that the Uruguay Round legislation does both. My point 1 was that it was proconsumer. My point 2 was that it would improve our trade performance, create jobs, and at least make a small dent in the problem we are talking about.

I am fully with you on the basic philosophy. I was addressing myself to a narrow question, which I thought was the subject of today's hearing, would the current legislation help or hurt? Contrary to some of the generalities thrown around by other speakers, I have never said it is a panacea for anything. In fact, I think it is a very modest element in which you quite rightly paint as a very broad, very troublesome landscape.

I do not want you to go away from this hearing thinking I have said everything is OK. I have never said everything is OK. I have said this agreement will make it a little better or, if you prefer, a little less bad, but I would refer you to those four reports of my competitiveness council. Mr. McMillion knows and he has talked with us and worked with us on that. I think there are deep problems in the economy and the society. On that I have been with you and others on the budget, on industrial policy, on supporting American industry, on looking at the producer side of the economy, not just the consumer. I think my record is clear on that. I do not want to be misrepresented on that count.

I also do not want to be misrepresenteded on this agreement. It is not a panacea. I never said that nor did I ever hint it. But I do think it is a good thing for the country and it will be marginally in the right direction.

The CHAIRMAN. Well, very good, sir. I want to thank each of the panelists here this morning. It has been a very valuable contribution.

The committee will be in recess subject to the call.

[Whereupon, at 12:16 p.m., the committee was recessed, to reconvene at 10 a.m., Friday, October 14, 1994.]

S. 2467, GATT IMPLEMENTING LEGISLATION

FRIDAY, OCTOBER 14, 1994

**U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.**

The committee met, pursuant to notice, at 10:04 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Good morning. The committee will please come to order.

Senator Pressler has a statement.

OPENING STATEMENT OF SENATOR PRESSLER

Senator PRESSLER. Well, it is not a statement, Mr. Chairman. It is just to say that I hope the witnesses will give us some specific examples of how trade is affected, and specific examples of products, and how it will specifically affect people in the United States. We have been having this great debate about GATT, and I find my constituents have not had it boiled down to the individual consumer or producer, and I would just make that request of our witnesses, that we get some specific examples today.

The CHAIRMAN. Very good. We are pleased this morning to have two distinguished witnesses, if they would please come forward. We have Ambassador Abraham Katz, who is the president of the U.S. Council for International Business; and Tom Donahue, the secretary treasurer of the AFL-CIO. You gentlemen do not mind sitting at the same table. [Laughter.]

Ambassador KATZ. Even together.

Mr. DONAHUE. We have done that.

The CHAIRMAN. Ambassador Katz, we welcome you, sir, and we are delighted to hear from you at this time.

STATEMENT OF AMBASSADOR ABRAHAM KATZ, PRESIDENT, U.S. COUNCIL FOR INTERNATIONAL BUSINESS

Ambassador KATZ. Thank you, Senator. I am Abe Katz, president of the U.S. Council for International Business, but today I am speaking for the Alliance for GATT Now, which is a coalition of the broad-based business organizations in the country as well as 500

individual companies formed to advocate passage of the Uruguay Round-implementing legislation.

Now, I would like to say right off the bat that I am honored to share this panel with Tom Donahue. The AFL-CIO represents the workers in the International Labor Organization and our organization represents the American employers, and we frequently work together, so this is a pleasure indeed to share this task with Tom Donahue, even though I am sure we will not agree on all the points.

The CHAIRMAN. Very good. And incidentally, your statement in its entirety will be included in the record. You can deliver it if you wish, or highlight it, if you wish.

Ambassador KATZ. Well, I would like to say that the formal statement can be in the record, but let me concentrate my oral remarks on the impact of the Round on trade, on jobs, and wages in the United States. I think that is the topic that we were told that you were most interested in for this panel.

The CHAIRMAN. Yes.

Ambassador KATZ. Yes.

And I would like to make a basic point on this issue. Most economists agree that additional exports create new jobs. The consensus estimate is that from 14,000 to 17,000 jobs are created for every added \$1 billion in new exports. Now, they also agree, obviously, that imports displace some jobs. For example, a recent study by Bill Kline at the Institute for International Economics estimated that about 77,000 jobs will be lost by the year 2005 from implementation of the multifiber agreement phaseout.

On average, and this is a number that you should keep in mind, 1.5 to 2 million American workers are displaced annually through the normal functioning of our economy. Most of them find new jobs, some go on unemployment for an extended period, and some drop out of the labor force. But overall, a steady or declining rate of unemployment, as we have experienced over the last 2 years, shows that more jobs are being created than lost.

Now, even the worst-case estimates, which we believe are grossly exaggerated, show that on average only a small fraction of these jobs that are lost every year are due to trade. Now, these lost jobs obviously represent a traumatic experience for those who lose their jobs. But it is no less traumatic for those who lose jobs for nontrade reasons. Business supports Government programs to retrain and assist workers temporarily displaced for whatever cause, including trade, but certainly not just limited to trade. The net effect on total employment will only be known after the trade liberalization takes full effect. We expect it will be positive, but we acknowledge that many economists believe, as one has written, that microeconomic events like trade liberalization have a minimal impact on employment over time.

Economists expect that, all other things being equal, the Uruguay Round should yield growth of up to \$200 billion annually once it is fully implemented. That is growth that would not have taken place. This, alone, will benefit American workers. But it is difficult to predict how these benefits will be apportioned between employment and wage increases. These estimates are based—the estimate of \$200 billion—on the tariff effects, and do not take into account

benefits by virtue of liberalization of services or improvement of trade rules such as intellectual property. Trade liberalization does not result in wholesale destruction of industries, but rather promotes rationalization by which some segments within an industry expand and others contract, depending on their global competitiveness.

The real issue, therefore, is not how many jobs will be created net over 10 years or more, it is rather what kind of jobs are likely to be lost or created. Export opportunities are likely to support the trend that is now very apparent in our economy that growth-led increases lead to higher value added employment. By and large, job losses are likely to occur disproportionately among the lower skilled and lower paid. Job creation is almost certain to be concentrated in the higher skilled, higher paid areas where we already know that the average wage in U.S. exporting manufactures is about 18 percent higher than the average for American manufacturers as a whole.

Again, I want to stress support for effective programs to assist those who are displaced and in transition from one job to another. But the best way to assure that the skills and job opportunities of American workers will be rising over time is to ensure a growing dynamic efficient economy, and to focus on ways to upgrade the skills of workers to take advantage of these opportunities that are created by a growing economy. Expanded exports will create the opportunities, but working together, business, Government, and in many cases trade unions, can upgrade the skills needed to take advantage of these opportunities.

My message, Senator, is simple: The better future of our economy lies in promoting high-paying jobs for the greatest number of workers. Rejecting the Uruguay Round will make that outcome much more difficult. If we really want to promote the interests of American workers, let us create opportunities to get better paying jobs by lowering trade barriers to our exports.

Thank you, Senator.

[The prepared statement of Ambassador Katz follows:]

PREPARED STATEMENT OF ABRAHAM KATZ

Mr. Chairman and members of the committee, I am Abraham Katz, president of the U.S. Council for International Business. Thank you for giving me the opportunity to discuss the importance of the Uruguay Round to the American economy, to American businesses, and to American workers, and the need for Congress to implement the Round without further delay.

I am speaking today for the Alliance for GATT NOW. All together, GATT NOW represents all the broad-based organizations as well as more than 500 individual companies, large and small. Many of these companies represented directly or by their organizations in GATT NOW are involved in exporting American products and services; all are affected in one way or another by the global economy. These companies, their employees and their shareholders, are among those who stand to benefit from speedy passage of the GATT.

I must stress how urgent it is for Congress to implement the Uruguay Round now. The Round, agreed to by some 120 nations, will provide a needed boost to the U.S. economy by increasing U.S. exports and improving international trade rules. The Uruguay Round, after full implementation, will help the U.S. economy grow by as much as \$200 billion a year more than it would without the agreement, create hundreds of thousands of new U.S. jobs, and boost average wages by over \$1,000 a year. Delaying implementation would push back these benefits, reducing the long-run cumulative gains for the United States.

- The U.S. Department of the Treasury estimates that waiting 6 months would mean 25,000 fewer U.S. jobs and lost production of \$70 billion over the next decade. This will cost the average U.S. family \$110 a year in income over the next decade. Some economists think this estimate is low, but regardless of the exact number, it is clear that delay costs the United States.

- Growth in the U.S. economy from the Round will result in higher Government revenue, reducing the budget deficit. Delaying implementation delays, in turn, deficit reduction.

- Business needs certainty to develop and implement long-term business plans. Companies are eager to take advantage of the opportunities presented by the Round, but we cannot begin to do so until we are certain of implementation. Delay will hinder U.S. industry and their workers from seeing the Round's benefits.

The United States must act now to continue its leadership in the world economy and clearly demonstrate support for open international markets. If the United States delays, it will call into question not only U.S. leadership but also implementation by many important nations, including Japan and the members of the European Union. It would be a disaster for the United States to retreat from its position as an economic superpower and bring down an agreement that was built so carefully over 7 years.

The Alliance for GATT NOW believes the Round stands for opportunity. Opportunity to break down trade barriers and sell more American products and services around the world, including to the world's fastest growing economies in Latin America and Asia. We must bear in mind how vital exports are to the U.S. economy and to economic growth. For example:

- Exports accounted for almost 12 percent of U.S. economic output in 1993, up from 5 percent in 1970.

- From 1988 to 1993, exports were responsible for about 50 percent of total U.S. economic growth.

- 7.5 million U.S. workers directly owe their jobs to merchandise exports, and 3.5 million more to services exports. This does not even include all those whose jobs are indirectly supported by exports.

- The average wage for jobs directly supported by merchandise exports is 18 percent higher than the overall average wage.

International trade does not just benefit the companies and workers that produce the ultimate exports. It also benefits many other businesses and their workers. For example, when a company exports semiconductor products, the company's suppliers gain from increased sales to it. In addition, banks that supply financing to the exporter and its suppliers gain. Even the companies that sell to employees benefit, such as manufacturers of cars and other consumer products, and providers of home mortgages, insurance, and utilities. International trade also benefits U.S. consumers by providing lower prices, better quality products, and a wider selection of consumer goods. Finally, open trade promotes the competitive environment which all businesses need in order to innovate and grow.

But, in order for businesses to operate with some degree of certainty amid the world's complex array of trade rules, we must have a trading framework that replaces chaos with order, and uncertainty with predictability. Moreover, the framework has to be clear, fair, and relevant.

We believe that the GATT Uruguay Round Agreement provides a much improved framework for the world's trading system and will be advantageous to American business, workers, and consumers. It is a major step in the continuing efforts, led by the United States, to eliminate barriers to trade and investment, and to expand world economic growth.

Among the reasons the United States needs the Uruguay Round now:

- It will significantly reduce or eliminate tariffs on a wide range of products. Overall, developed-country tariffs will be reduced by about one-third, while the European Union's will be slashed in one-half. The Round is a major step toward the U.S. goal of improving market access for a broad range of our products.

- For the first time, international rules will cover agriculture and service industries. This will help ensure that U.S. producers get a fair shake when trying to sell their products abroad.

- The Round represents a substantial step forward in the international protection of intellectual property. This is essential for U.S. companies in the most promising and innovative industries of the future—industries like computers and information services, pharmaceuticals, and entertainment. The Round will help ensure that our competitors abroad are no longer allowed to reap the benefits of our innovation and our substantial commitment to research and development.

- The Round will make it more difficult for countries to impose investment restrictions that distort trade and inhibit job creation.

For these reasons and others, the Uruguay Round makes significant improvements in the GATT system.

If the United States does not implement the Round, we will not be left just with the status quo—including high foreign tariffs, significant nontariff barriers, foreign agriculture subsidies that hurt U.S. farmers, heavy restrictions on U.S. service companies, and widespread theft and pirating of U.S. patents, copyrights, trademarks, and trade secrets. Instead, we will almost certainly face a new era of intense trade friction, worldwide loss of business confidence, a dragging economy and forfeiture of U.S. credibility and leadership in international economic affairs. How can anyone believe this is in the country's best interests?

There are no valid reasons to put off final congressional action. Most details of the agreement have been known for at least 9 months. Before this hearing, 13 congressional committees and subcommittees have held 22 public hearings, and there have been dozens of executive sessions, briefings, and caucus meetings to discuss it. There has been ample debate this year for Members to take final action now.

Some have argued that the Round will endanger U.S. sovereignty. This is a red herring put forward by those who would prefer to retreat from the promises and opportunities for the global economy. Ignoring the hyperbole, the facts are clear. Existing GATT rules are, in most cases, either unchanged or improved, with larger majorities required to make decisions. The changes in the dispute settlement rules were made to provide for more effective and expeditious dispute settlement—an objective set forth by Congress in the 1988 trade act. And, of course, nothing in the Uruguay Round alters the fact that only the U.S. Government can make changes in U.S. law.

While economics and history teach us that open and free trade is the surest engine of global economic growth, virtually all national governments continue to face significant protectionist pressures within their borders. These pressures are greatest during difficult economic times, when uncertainty about the future is at its peak. Protectionism, however, impedes international trade and stifles economic growth. No major developed country, least of all our own, can afford to turn its back on the opportunity to expand markets and increase exports. This country's economic objectives—growth, jobs, and prosperity—are tied to healthy integration in the international marketplace.

The Uruguay Round, 7 years in the making, is an important step toward a more prosperous economy for the United States and our trading partners. Three administrations, two Republican and one Democratic, pursued a common free market agenda to achieve the agreement. Let's implement it now.

Thank you.

The CHAIRMAN. Thank you very much. Mr. Donahue.

STATEMENT OF THOMAS DONAHUE, SECRETARY/TREASURER, AFL-CIO

Mr. DONAHUE. Mr. Chairman, the Federation appreciates the opportunity to present views on the implementing legislation, and I would like, sir, to commend you and your committee for fulfilling the responsibility under the fast track procedures for holding these series of hearings. I think only these efforts will give the American people a chance to be informed on legislation that is exceedingly complex and whose implications for the Nation are truly far reaching. You have already received the report of the Labor Advisory Committee which was sent up to the Congress by USTR with the submission of the Uruguay Round agreement, and that report covered our technical analysis of the agreements as negotiated. This morning, we have submitted to you a longer piece of testimony. I would just like to offer an overview of our analysis of the Round's results.

We think that the Uruguay Round trade agreements offer little if anything that is positive for U.S. workers, and in certain respect will directly harm their interests. These agreements have failed to bring equity and reciprocity to the international trading system, and may create pressures to harmonize downward essential protec-

tions that are afforded by production, consumer, and environmental laws and regulations. We are particularly concerned that these agreements, if implemented would severely limit the ability of the United States to fashion policies and take actions to reduce this country's persistent and growing trade deficit. And for an agreement that expands trade rules into so many new areas, the failure to address worker rights and standards is a devastating omission. The AFL-CIO urges the Congress to reject the Uruguay Round implementing legislation.

When the Uruguay Round of negotiations formally began in 1986, our merchandise trade deficit had reached what was the previously unimaginable level of \$138 billion. While it shrunk somewhat over the last few years, that trade deficit is again growing rapidly, and is projected to reach a record \$160 billion in 1994. Over the last 12 years, the U.S. trade deficit has totaled \$1.5 trillion, and has transformed the United States from a creditor in 1985 to currently the largest debtor nation in the world, and with that as the record of the results of free trade, we are told that the Nation needs more of it.

Central to America's trade problem is the imbalance in manufactured goods trade. We enjoyed a trade surplus 12 years ago, while 1994 is going to show a deficit of more than \$130 billion in manufactured goods. This rapid and massive shift in trade has severely weakened America's industrial base and has had a major negative impact on employment and on income. Since 1986, almost 1 million manufacturing jobs have disappeared, while the average weekly manufacturing wage, adjusted for inflation, declined 6.2 percent.

Those shifts in the structure of the U.S. economy have contributed to the significant increase in poverty in the United States. Last year 39 million Americans were living in poverty, including millions of full-time workers. In 1993, 15 percent of Americans had incomes below the official poverty line of \$14,763. Last week Secretary Reich, commenting on those statistics, said "this is a continuation of a 15-year trend toward inequality. We have the most unequal distribution of income of any industrial nation in the world. Unless we turn this situation around we are going to have a two-tiered society. We cannot be a prosperous or stable society with a huge gap between the very rich and everyone else."

Over the 15-year period that Secretary Reich addressed, the U.S. trade deficit grew to unprecedented levels, and good, well-paying jobs were being sacrificed on the altar of free trade. The Uruguay Round agreements represent the culmination of a Government policy that believes that trade and investment liberalization, under virtually any circumstance, will benefit America. In contrast, the vast majority of this Nation's trading partners approach global trade negotiations with the objective of maximizing their domestic production and their domestic employment. The United States alone is fixated on economic abstractions, and that focus has resulted in massive trade deficits, massive worker dislocations, declining real income, and increasingly skewed income distribution. The human and social costs of the policy have been devastating.

With respect to the proposed WTO, and dispute settlement, let me just note that rather than creating structures that would help reduce our increasing trade deficit, the Uruguay Round agreement

will make it much more difficult for us to take any action to defend our national interest. In this regard, the establishment of the WTO to replace the GATT and the establishment of a binding dispute settlement mechanism is a major concern. Under the agreement, U.S. actions against WTO-covered unfair, unreasonable, or discriminatory trade and investment practices that are in dispute would require the prior authorization of the WTO. That authorization that would be given by a panel of experts in its decision, pending review by a permanent appeals panel, would be binding. That is a major change from existing procedures, and has far-reaching implications for the operation and implementation of existing U.S. laws.

For example, language in the proposed agreement requiring the use of dispute settlement would appear to severely restrict the use of Section 301 of the Trade Act without prior WTO authorization. Second, since the proposed agreement does not provide for mechanisms to deal with external imbalances, it will greatly restrict the ability of the United States to deal with bilateral trade problems like the \$60 billion trade deficit with Japan. Any agreement with Japan that has teeth, or any unilateral action that might be taken by the United States, would run afoul of the requirements imposed by the WTO and would be subject to challenge and sanction.

With respect to textiles and apparel, we would note that the proposed agreement is particularly harmful to U.S. workers by phasing out what is needed regulation of trade in textile and apparel. Ending all controls on textile and apparel imports, even with a 10-year transition, threatens 1.7 million workers employed by those industries, plus additional hundreds of thousands of workers in supplying industries. Here, the price for liberalized trade is going to be paid by those who can least afford it.

Regrettably, the Uruguay Round did nothing to address the cruelest and most prevalent trade subsidy of all, the suppression of human and worker rights by governments seeking a low-wage, low-standard comparative advantage in the world market. Even the proposals to create a process for studying the inclusion of basic internationally recognized worker rights in the GATT, have been stalled by those who wish to keep the benefits of world trade as the private preserve of the privileged few. World trade will not improve living standards significantly unless ordinary working people have the right to associate freely, the opportunity to share in economic progress, and thereby develop the power to create broad markets for goods and services. A strong worker rights clause in the GATT is the only practical way of ensuring that governments that want to enjoy the benefits of the world trade system respect the rights of their citizens.

The AFL-CIO is, for its part, greatly disappointed in the outcome of the Uruguay Round negotiations. The sacrifices of the United States, particularly the sacrifices for textile and apparel workers, loom large while opportunities to bring equity and fairness to the trading system have been sidetracked or lost. The United States apparently decided to continue its outdated role as the guarantor of the trading system by accepting disadvantageous and nonreciprocal treatment. The massive and continuing trade deficits of the past decade and their cost have been ignored. The Nation

can no longer afford to turn its back on its most vulnerable citizens in order to promote the interests of the privileged few corporations. Congress should reject the Uruguay Round implementing legislation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Donahue follows:]

PREPARED STATEMENT OF THOMAS R. DONAHUE

Mr. Chairman, the AFL-CIO appreciates this opportunity to present its view on the implementing legislation for the Uruguay Round trade agreements. You are to be commended for fulfilling your responsibility under the fast track procedures by holding this series of hearings. Through your efforts, Congress and the American people will have a chance to be informed on legislation that is exceedingly complex and whose implications for the nation are truly far reaching.

The AFL-CIO believes that the Uruguay Round trade agreements offer little, if anything positive to U.S. workers, and in certain respects will directly harm their interests. They have failed to bring equity and reciprocity to the international trading system, and may create pressure to harmonize downward essential protections afforded by production, consumer, and environmental laws and regulations.

We are particularly concerned that these agreements, if implemented, would severely limit the ability of the U.S. to fashion policies and take actions to reduce this country's persistent and growing trade deficit. And for an agreement that expands trade rules into so many new areas, the failure to address worker rights and standards is a devastating omission.

The AFL-CIO urges Congress to reject the Uruguay Round implementing legislation.

When the Uruguay Round of Trade Negotiations formally began in 1986, the U.S. merchandise trade deficit had reached the previously unimaginable level of \$138 billion. While shrinking somewhat over the last few years, the trade deficit is again growing rapidly and is projected to reach a record \$160 billion in 1994. Over the last 12 years, the U.S. trade deficit has totaled one and one half trillion dollars, and has transformed the U.S. from a creditor, in 1985, to currently the largest debtor nation in the world.

Central to America's trade problem is the imbalance in manufactured goods trade. Twelve years ago, the U.S. enjoyed a trade surplus in this vital sector, while 1994 will show a deficit of more than \$130 billion. In fact, while total imports doubled over the past 12 years, manufactured imports surged from 54 to 83 percent of all imports. This rapid and massive shift in trade has severely weakened America's industrial base, and has had a major negative impact on employment and income. While total employment has grown over the last number of years, that growth has taken place solely in the service sector. Since 1986, almost one million manufacturing jobs have disappeared, while the average weekly manufacturing wage, adjusted for inflation, declined 6.2 percent.

These substantial shifts in the structure of the U.S. economy have contributed to the significant increase in poverty in the U.S. Last year 39 million Americans were living in poverty according to the Census Bureau, including millions of full-time workers. In 1993, 15.1 percent of Americans had incomes below the official poverty line of \$14,763 for a family of four.

Commenting on these statistics, Secretary of Labor Robert Reich said:

"This is a continuation of a 15-year trend toward inequality. We have the most unequal distribution of income of any industrial nation in the world. Unless we turn this situation around we're going to have a two-tiered society. We can't be a prosperous or stable society with a huge gap between the very rich and everyone else."

Over the fifteen year period noted by Secretary Reich, the U.S. trade deficit grew to unprecedented levels, with good, well paying jobs being sacrificed on the altar of free trade.

The Uruguay Round agreements represent the culmination of a U.S. government policy that believes trade and investment liberalization, under virtually any circumstance will benefit America. In contrast, the vast majority of this nation's trading partners approach global trade negotiations with the objective of maximizing domestic production and employment. The U.S. alone seems fixated on economic abstractions, and that focus has resulted in massive trade deficits, massive worker dislocations, declining real income, and increasingly skewed income distribution. The human and social costs of this policy have been devastating.

WTO AND DISPUTE SETTLEMENT

Rather than creating structures that would help reduce this country's increasing trade deficit, the Uruguay Round agreement will make it much more difficult for the U.S. to take action to defend its national interest. In this regard, the establishment of the World Trade Organization (WTO) to replace the GATT, and with it, a binding dispute settlement mechanism, is a major concern of the AFL-CIO. While the concept of creating a structure that can enforce agreements freely entered into is not necessarily bad, the ultimate value of such a structure rests on the kind of rules it has to administer and the public's confidence that it will administer those rules fairly.

Under this agreement, actions against WTO covered unfair, unreasonable, or discriminatory trade and investment practices that are in dispute would require the prior authorization of the WTO. That authorization would be given by a panel of experts, and its decision, pending review by a permanent appeals panel, would be binding. This is a major change from existing procedures, and has far-reaching implications for the operation and implementation of existing U.S. laws. For example, language in the proposed agreement requiring the use of dispute settlement would appear to severely restrict the use of Section 301 of the Trade Act without prior WTO authorization.

Further, the Uruguay Round agreement has greatly expanded the new WTO's jurisdiction over governmental practices, and consequently, the U.S. would be restrained from taking unilateral action against anything covered by the agreement. Even for practices not addressed, like worker rights, competition policy, market access for audio-visual goods and services, and some forms of environmental protection, this expanded coverage represents a severe limitation on remedies that could be employed by the U.S.

It is important to emphasize, that the proposed agreement is far different from previous trade agreements because it addresses governmental actions that heretofore had been considered purely domestic in nature. Therefore, it may inhibit, if not prevent the strengthening of domestic laws and regulations in areas such as consumer and environmental protection.

Since the proposed agreement does not provide for mechanisms to deal with external imbalances, it will greatly restrict the ability of the U.S. to deal with bilateral trade problems, like the \$60 billion trade deficit with Japan. Any agreement with Japan that has teeth, or any unilateral action taken by the U.S., would run afoul of the requirements imposed by the WTO and be subject to challenge and sanction.

TEXTILE AND APPAREL

The proposed agreement is particularly harmful to U.S. workers by phasing out needed regulation of trade in textiles and apparel.

U.S. trade negotiators rejected the more than thirty year recognition by successive Administrations that apparel and textiles are import sensitive. They followed the pattern laid down by the prior Administration by actively pushing for an end to the Multifiber Arrangement. Even though MFA was inadequately used in the last decade, it provided some job protection for the workers employed in the U.S. industry.

Ending all controls on textile and apparel imports, even through a ten year transition, threatens 1.7 million workers employed by those industries, plus additional hundreds of thousands of workers in supplying industries. Here, the price for "liberalized trade" will be paid by those who can least afford it.

WORKER RIGHTS

Regrettably, the Uruguay Round did nothing to address the cruelest and most prevalent trade subsidy of all—the suppression of human and worker rights by governments seeking a low-wage, low standard "comparative advantage" on the world market. Even proposals to create a process for studying the inclusion of basic, internationally-recognized worker rights in GATT have been stalled by those who wish to keep the benefits of world trade as the private preserve of the privileged few.

World trade will not improve living standards significantly unless ordinary working people have the right to associate freely, the opportunity to share in economic progress and thereby the power to create broad markets for goods and services. A strong worker rights clause in GATT is the only practical way of ensuring that governments that want to enjoy the benefits of the world trading system, respect the rights of their citizens.

Some have attempted to characterize this issue as a conflict between the developed and developing worlds. When it comes to working people themselves, nothing could be further from the truth. Protection of worker rights has long been a priority

of democratic worker organizations in nearly every country—whether or not they are highly-industrialized.

The fact is that trade and worker rights are already linked. The burning question is whether that linkage will serve working people and their aspirations for a better life or facilitate only those who would profit from exploiting them.

CONCLUSION

The AFL-CIO is greatly disappointed in the outcome of the Uruguay Round negotiations. U.S. sacrifices, particularly for textile and apparel workers, loom large, while opportunities to bring equity and fairness to the international trading system have been sidetracked or lost. The U.S. has apparently decided to continue its outdated role as the guarantor of the trading system by accepting disadvantageous and nonreciprocal treatment. The massive and continuing trade deficits of the past decade, and their human cost, have been ignored.

The nation can no longer afford to turn its back on its most vulnerable citizens in order to promote the interest of the privileged few. Congress should reject the Uruguay Round implementing legislation.

The CHAIRMAN. Thank you.

Ambassador Katz, I want to yield to our colleagues here because we appreciate their willingness to in the off season here participate, and I will have plenty of time. Mr. Ambassador, No. 1, I have got the greatest respect for the Department of State and Ambassadors. I happen to have chaired, over the years now, the Appropriations Subcommittee with jurisdiction over the Department of State, and I look upon the State Department as more or less the front line now with the fall of the wall. We have moved from the cold war to the economic or trade war, and have to put our best foot forward not so much with CIA's sneaking around trying to find nuclear missiles, but more particularly trying to spread capitalism and competition with a welcome card from our State Department friends. I think, in other words, we ought to be increasing the State Department rather than cutting back.

Now, you are career, as I understand, and spent years in the service of the Department of State, and during those years of career, what really occurred was—and I saw this with my own eyes 35 years ago in Latin America and in Europe with respect to trade missions—they did not want to fool with business people, American businessmen. It got to crisis several times. In more recent years, at the end of the Carter administration, it was Senator Roth over on the Finance Committee that raised the question. The agricultural folks had already said, "Look, we do not want any," and I say this respectfully, "we do not want any Ambassadors doing our work overseas, we are losing our shirt."

So, they had the agricultural attaché not report to the Ambassador, but report directly back to the Secretary of Agriculture. And so Senator Roth at that time said, "Well, we will let the trade agreement go forward on one understanding, that hereafter the commerce attaché" in that particular city—whether it be in Berlin or Beijing or wherever it is—that the Commerce attaché "report directly to the Secretary of Commerce." I only mention that because it has been a given that the State's crowd would willingly sell out the manufacturing capacity of the United States to make friends the world around.

Having said that, let us go to the Alliance for GATT Now. Incidentally, I wanted one of those Fortune 500 representatives to testify.

Ambassador KATZ. Excuse me?

The CHAIRMAN. One of the executives of the Fortune 500. I met one on McNeill-Lehrer, a distinguished gentleman.

Ambassador KATZ. Mr. Junkins.

The CHAIRMAN. Jerry Junkins, the head of Texas Instruments.

Ambassador KATZ. Yes, sir.

The CHAIRMAN. And he was allowing how interested he was in jobs. And we had to point out, yes, jobs in Taiwan. He was the biggest exporter from Taiwan. And when he tried to waffle on that one we pointed out, as Secretary Reich said in his book, on page 95 of the book "Work of Nations," that that Fortune 500, the group that you represent, the Alliance for GATT NOW, had not created one net new job in 15 years.

Now, we can go just to the arithmetic, and then I would yield, because it is very interesting. It seems like a mystery, but very understandable to this Senator. A recent Washington Post article reads, "Rising Tide Does Not Lift Clinton." And it says right there that over the 3-year period—let us say President Clinton created 4.5 million jobs. However, we just heard from Mr. Donahue about the expected trade deficit of \$160 billion. You used the 17,000 figure per \$1 billion of exports. The witnesses heretofore have been using a 20,000 figure. Just take the 20,000 figure and the \$150 billion deficit. If \$1 billion equals 20,000 jobs, then a deficit of \$150 billion means you lose 3 million jobs.

Now, you see, this is what has been going on. It takes you 3 years to pick up the 4½ million, and in 1 year you lose 3 million, and we have been losing them because we have had these horrendous trade deficits. If you had an accountant that just looked at one side of the ledger; namely exports, and did not look at imports, you would fire him. And the witnesses constantly come up on behalf of the Coalition for GATT talking exports, exports, exports, just a veritable drumbeat. The fact is that you look at exports and imports and there is a trade deficit. And with the impending \$150 to \$160 billion trade deficit, we are going to lose 3 million jobs. They are manufacturing jobs, and the ones being created—yes, since interest rates are down, you have got a lot of construction jobs, you have got a lot of service jobs, and you have got a lot of part-time jobs. Now, therein is why the President does not get any rising tide, because the tide is not rising. The tide is not rising.

Let me yield for your comments.

Ambassador KATZ. Well, so much has been said that I would like to respond a little bit. I hope I do not take too much time. First, Senator, I was in the Commerce Department, assigned as Assistant Secretary of Commerce, when we established the Foreign Commercial Service. And we know that we were ordered to do this because of the deficiencies that you mentioned. Since that time, I think my old Department has learned some lessons and is trying very hard to improve, and I think there are some results in specific cases, because in many cases, as you know, it not only takes the foreign commercial attaché to get a deal, it really does take the Ambassador to get in there and wheel and deal at the highest levels. And I can tell you, when I was in commerce I had some very satisfying operations with Ambassadors whom I had to get up in the middle of the night because there was a big deal for aircraft engines, for example, pending, and other governments were using their big

guns. And I must say, to its credit, this administration has not hesitated, as you know, from the President on down, to get in there and get the deal and get it made, and the State Department has realized that it really has to get with it. So, recognizing what you say about the traditional approach of the foreign service and having fought against it for many, many years, I think it is changing, so I am a little optimistic on that score.

Second, to your important point about imports causing the loss of jobs, you have to look at what these imports consist of. In the first case, the deficit, as has been mentioned, Tom mentioned the deficit with Japan, is obviously skewed, first of all bilaterally in terms of Japan, and that is a very, very special topic, and two, it is skewed because of the commodity composition. The bulk of our import of our trade deficit is represented by imports of petroleum and petroleum products, hardly a job displacing commodity. Now, in the case of Japan, it is absolutely essential to use market—

Senator DORGAN. Might I just interrupt, Mr. Chairman? Did you say the bulk of the deficit except for Japan is largely petroleum and petroleum products?

Ambassador KATZ. Yes, sir.

Senator DORGAN. You are including China in that?

Ambassador KATZ. Yes, sir.

Senator DORGAN. All right. I want to ask you some questions about that.

Ambassador KATZ. My understanding is that the bulk of the U.S. trade deficit is made up of oil and oil products. That is a big dollar number. And the big dollar number bilaterally is our import deficit with Japan. It is absolutely essential to work on the market access problems in Japan. And this administration has worked on it. I, for my sins have had the experience in the Commerce Department. It is a frustrating experience. But I think everybody will agree that no matter what we do about market access in Japan, the real reason for our deficit with Japan is that they save more and we consume more, so that the real basic reason is that the U.S. economy, the U.S. consumer, is living beyond its means and the Japanese are providing those products, and they are saving a good deal more of their gross national product in their economy, and I do not want to get into the Japanese economy but it is essentially to deal with their aging population problem.

Now, what does the Uruguay Round do to this situation? In the first place, our markets are more open than any others, and the Uruguay Round will open more markets abroad for U.S. exports. We are the leading exporter in the world; we are the most competitive exporter in the world; and therefore, there is no doubt that our benefits will be enormous from this round of trade liberalization.

Now, nobody can guarantee that we are going to get x number of jobs at the end of the process. But most of the estimates are that we will get quite a few jobs. I have seen estimates ranging on the order of 200,000, 265,000, 300,000 jobs, additional jobs, at the end of the liberalization process. I am not going to insist on that number, Senator, for the simple reason that the GNP growth, the \$200 billion that I mentioned, can easily be divided in a different way. It could be divided between wage increases and jobs. If wage increases are greater than productivity increases, we will not get as

many jobs. We may lose some jobs, obviously. So, that it is the growth of our economy that we expect out of this massive tax cut, which is what the Uruguay Round is, and market-opening measure.

Finally, Chairman, look at the possibility that the Congress should do what Tom recommends, and that is to reject the implementing legislation. I would think that that would be a step that would equal the one taken by this Congress—the Congress, not this Congress, obviously—in October 1929, when it took the first step that led to the Smoot-Hawley tariff. And if Mr. Donahue can claim that the Smoot-Hawley tariff and the events that followed benefited American workers, then I cannot really believe that people are so blind to the history of this country and to the history of the working class of this country. We just saw on public television the situation this country was plunged into following the Smoot-Hawley tariff in the series on FDR. That major exercise in protectionism was the direct contributor to the Great Depression, and if we do not ratify the Uruguay Round, that is where we are headed, and the first group that will suffer will be the American worker.

The CHAIRMAN. In yielding, let me just correct two or three things. I know my colleague here, Senator Dorgan, just immediately reacted as I did to what you said about oil because we have got a \$24 billion deficit with the country of China. And we do not get any oil from China. And we have got a \$31 billion deficit in textiles alone, and we have got a \$50 billion deficit in automobiles alone. Also, there was not any action in October 1929, the action on Smoot-Hawley was way 8 months later.

Ambassador KATZ. Yes, sir.

The CHAIRMAN. And that was in June 1930.

Ambassador KATZ. Yes.

The CHAIRMAN. The crash occurred in October 1929.

Senator Pressler.

Senator PRESSLER. Thank you. I think it is fascinating. I wonder if we could get from staff, maybe by next week, a little sheet that would show what the real numbers on where we are making our money in trade and where we are losing it. Now, as I understand it is it not true that agricultural products we export about I am told \$40 billion; aviation about \$33 billion. Now, are those our two largest moneymakers? Would that be a correct assessment?

Ambassador KATZ. Yes, sir.

Senator PRESSLER. And when I went over to Airbus recently, I was going to—

Senator DORGAN. Excuse me. Would the Senator yield on that point?

Senator PRESSLER. Yes.

Senator DORGAN. We make money on an agriculture export provided that it is not subsidized in order to get into a market. For example, what we sent to China is deeply subsidized, so we actually sell it for below the cost of production. So, while we should be continuing to export and expanding agricultural exports, we are not at this point making money on many of them because of the EEP.

Senator PRESSLER. Well, that is a very good point. I wonder if we could get a sheet by some smart staff member to show where we make our money in trade now and where we lose it, with that al-

lowance that my good friend from North Dakota has pointed out? But I was going to go over the Airbus and debate with them and really show them how they were subsidizing and doing their research unfairly and so forth, and they turned the tables on me by arguing that in the United States our two major moneymakers, our two major exports, agriculture and aviation, are both the research, according to them, are subsidized by the Government in the sense that military research on airplanes has been transferred to domestic airlines, and that the State university system on agriculture has subsidized agriculture research, and also that we essentially subsidize our exports through the EEP's program or this or that. It was all convoluted, I guess, but the point is Europe, we accuse them of using subsidies in agriculture and aviation, but they sort of turned the tables on me in this debate, at least. How much validity—do we make most of our money out of things that the Government has provided research for, and under this GATT agreement will we have to stop doing that or make allowances for it? Are they our two major exports, agriculture and aviation?

Ambassador KATZ. Well, agriculture is certainly an important contributor to our balance of trade.

Senator PRESSLER. Well, is it the leading one. Is agriculture?

Ambassador KATZ. In the manufacturing sector, aerospace is the major contributor with 38 billion dollars' worth of exports in 1993.

Those statistics that you request, by the way, are readily available. But there are others, including machinery, chemicals, and so forth. And we could provide you with that data.

Senator PRESSLER. If we sent an EEP agricultural sale abroad, we do not make any money on it. Where are we getting our balance-of-trade problem?

Ambassador KATZ. Well, Senator, there is a subsidy element in our agricultural production. And one of the major objectives of the United States is to get out of competing through subsidization. Because, as my agricultural colleagues used to say, we have the God-given ability to outcompete any other area in the major agricultural crops. And that is not only because of the favorable endowment of the United States, in terms of soil and climate, but also the heavy capitalization of American farms.

Now, that is a broad generalization. And obviously not every crop and not every farmer is going to benefit by trade liberalization. But the real issue in this negotiation has been trying to get some grip on the subsidization process abroad, and especially of the European Community.

I read this morning, coming down on the plane from New York, that the rice farmers in Japan are doing what they can to hold up implementation of the Uruguay Round in that country.

Senator PRESSLER. But the Europeans argue that our aviation is subsidized because we do the research in the military and so forth. So, you can argue these things circuitously. But the point is where do we make most of our money in trade and where do we lose most?

You said we lose a lot in petroleum; where do we make most of it?

Ambassador KATZ. We make it in agriculture. We make it in aircraft, in machinery, and in automotive products. These are three which will benefit clearly from the Uruguay Round.

Senator PRESSLER. Now, what types of costs do you predict for the retraining and relocating of workers from declining to expanding industries, along with the administrative costs of dealing with these shifts through policies of adjustment assistance? What type of cost estimate exists for the shifting of capital from declining to expanding industries? Do we have anything like that projected under GATT?

Ambassador KATZ. Well, sir, I think the point of my testimony was that the shift of workers from declining to advancing industry due to the Uruguay Round is going to be a small part of the annual shift that takes place of 1.5 to 2 million workers a year. The estimates vary, but I have seen estimates this is going to be less than 10 percent—a fraction of the total displacement.

So, my point, and I think the business community is united on this, is that you should not have adjustment and retraining programs simply for workers who are displaced by trade. And this is an argument that we have had with our colleagues in the AFL-CIO. We need a broad-based training, retraining and adjustment program for all workers.

The worker who gets fired because his company has lost a defense contract is no less traumatized and is in no less need of assistance than the worker who may lose his job because of an increase in textile imports.

Senator PRESSLER. Now, the big picture; if we go into GATT, is there a possibility that there will be some rival regional trade organizations? For instance, could a bloc in Southeast Asia or a group of European countries that do not go into GATT that spring up, that will be a rival trade organization?

Ambassador KATZ. No, sir. And I am glad you mentioned the question of regional trading organizations. We have just established NAFTA, which is a regional trading arrangement for this Hemisphere. The European Community is taking in new members. They are voting on entry in Finland this Sunday, and other countries are voting very shortly. Other Latin American countries would like to join NAFTA. The Asians would like to increase their cooperation.

Now, so far, these regional arrangements have been trade creating rather than trade distorting; because they lower the general level of protection within the region, increase economic activity, and this, in turn, increases the ability to trade and invest across borders.

Now, it is essential to encompass all of these regional arrangements in a global arrangement. Because the GATT and the WTO is not only a tariff reduction exercise—and the numbers I cited to you are essentially the result of projecting out the impact of tariff reductions over 10 years—it is a body of rules and regulations for the trading system, to which every regional organization will have to abide.

Senator PRESSLER. For example, we went through all the trouble of passing NAFTA around here.

Ambassador KATZ. Yes, sir.

Senator PRESSLER. And now NAFTA, under GATT, will NAFTA become irrelevant?

Ambassador KATZ. No, NAFTA will not become irrelevant, because the degree of liberalization, the strength of the rules of trade and investment and all that goes with it in NAFTA are much stronger than in a global situation. It is far from irrelevant. It will complement.

Senator PRESSLER. OK.

Ambassador KATZ. In other words, we regard regional arrangements as stepping stones, rather than stumbling blocks, to world trade liberalization.

Senator PRESSLER. I may have some additional specific questions on regional trade organizations, because I have a hard time seeing how they are going to fit in. But let me go on, just to keep moving.

Within the so-called light industries—specifically apparel and textiles—employment is expected to contract by 36 percent within the United States and to expand by 83 percent in the newly industrialized Asian countries—Hong Kong, Korea, Taiwan, and Singapore. Do current estimates exist of the extent to which workers would have to move to different locations in order to find new employment? I realize that this would depend on how expanding and contracting industries are distributed geographically.

Has any effort been made to measure the extent to which these particular workers that I have mentioned have to be retrained in order to enter new industries?

Is that a fair projection; by the way?

Ambassador KATZ. Well, I have seen other projections. The projection that I cited was one made fairly recently of a loss of about 77,000 jobs in that industry, compared to what would happen without the Uruguay Round. I am not competent to answer the question of what specific problems will arise in moving textile and apparel workers. But I would say two things.

First, no industry—and this is a point that I made—this is generally understood and you can look at the history—no industry is destroyed by trade liberalization. Different industries are impacted. Some will benefit overall. Some will not do so well. But the major impact of trade liberalization is that, as I said, there will be a rationalization within each industry. And those segments that compete globally will prosper.

That will include the textile industry, where there have been companies—as I am sure Senator Hollings knows—companies in this industry that have gone like a house on fire in terms of exports.

I am not an expert in the textile industry. In my days in Commerce, I remember working on the shoe industry problem, which was very hot at that time. And shoes were being impacted by imports considerably. On the other hand, there were shoe companies that were exporting—shoe companies that found that they were able, through superior technique, through finding the right market, to compete globally.

I remember finding out about two or three companies in the United States at that time that were exporting shoes to Great Britain—men's shoes, quality shoes to Great Britain, to compete with their shoes. Now, you know, what I am saying is the shoe industry

was not destroyed in the United States, although it has gone down, but there are shoe companies in the United States that prospered. And the same will be true of textiles and apparel. The real question is how much and which.

And the second point I would like to make is that since I do not know very much about this industry, and certainly today, I was surprised and gratified to see a statement from the American Textile Manufacturing Institute that they liked this legislation. So, maybe you ought to address them.

Senator PRESSLER. Well, good. Let me ask you—for the record if you do not have it here—these figures I have that the employment is expected to contract by 36 percent within the United States and to expand by 83 percent in the Asian newly industrialized countries. If you have other figures or anything to submit on that, I would be very interested to see.

Ambassador KATZ. OK.

Senator PRESSLER. Let me ask one more question, and then I will yield here.

The administration expects U.S. agriculture to reap significant long-run benefits under this agreement. Therefore, farmers and ranchers may be forced to pay heavily for GATT in the short run.

In fact, estimates predict short-term agricultural losses of as much as \$14 to \$18 billion due to reductions in existing U.S. tariff levels. Combine this with a proposed \$1.6 billion cut in agricultural export subsidies, along with significant reductions in farm programs, and it would appear that U.S. farmers are being asked to bear a disproportionate share of the short-run costs.

Would you agree with this assessment?

Ambassador KATZ. I am not qualified to answer that question, Senator. I do know that during the whole negotiation—and this was, as you know, the crunch point in our negotiation with the Community—it was to bring some discipline to the whole subsidy picture in world agriculture. We succeeded in beginning the process to the satisfaction of the main farm organizations of the United States.

Senator PRESSLER. Thank you very much.

The CHAIRMAN. Thank you.

Senator Stevens.

Senator STEVENS. Thank you very much.

Mr. Donahue, I do not know if you are as confused as I am about the unemployment figures that we are seeing. I asked this morning if a job that is lost in the Government sector is counted in these jobs, and the preliminary answer is "No." We have reduced Government jobs substantially in the Department of Defense, both uniformed and nonuniformed. Our goal I think is to reduce about 250,000 jobs during the next fiscal year. And I have seen a substantial reduction in employment in the local government area.

Have your people done any studies on that? Could you tell me if we can rely on these figures of current unemployment now? Does it cover, for instance, illegal immigrants? We have got a wave of illegal immigrants all up and down the west coast now. I find Central American people working in Point Barrow who are illegal immigrants. Now, are they counted?

Mr. DONAHUE. Senator, I would argue for the validity of the unemployment figures. I think the problem is that if you are looking at a Government job reduced—is that job in the figures?—no, the person who is not in that job and who is unemployed is in the figures, though.

Senator STEVENS. I am told that is not so. Not until they have lost a job in the private sector. That is the question I asked this morning.

Mr. DONAHUE. Well, if there is a displacement of a worker, if a Government agency reduces its complement from 16 to 15, and it lays off a worker, and if that worker is unemployed and reports himself as unemployed, then he is in the statistics.

Senator STEVENS. I would be interested if you could check that. Because we were informed this morning that is not the case; that we only deal with private sector unemployment, in the sense of a job lost in the private sector and a job gained in the private sector. If that is so, a lot of these things we are seeing about these statistics and what has happened on NAFTA and what will happen on this proposal are skewed, in my opinion. But I just ask you that for what it is worth.

Mr. DONAHUE. I think it has to do with two different sets of statistics. There is an unemployment rate and there is an insured unemployment rate. The Government worker, if he is not eligible for unemployment insurance—if he works in a State or a city government that does not cover for unemployment, then he will not show up in the insured unemployed rate. But he should show in the unemployed rate, which is the larger one.

Senator STEVENS. Well, I was out in California recently talking to old friends, and they told me they just cannot believe the statistics they are seeing about the rate of unemployment. Because they know the number of illegal immigrants that are there and the impact that they are having really on the job base of particularly southern California. And I would be interested to see if you have any information you can give to the committee.

Mr. DONAHUE. All right. I would be happy to.

Senator STEVENS. That is sort of an aside.

I appreciate your testimony this morning.

Mr. Katz, my friend from South Dakota here wants some specifics. Let me give you some specifics. My State is the largest producer of pollock in the world. We have, in the North Pacific, really a substantial base. Almost 3 billion pounds of pollock a year are produced off of our State.

I find it very interesting that cod, haddock, and pollock have the largest reduction in tariff under this agreement. It goes from 4.1 cents per kilogram to zero. Now, our competitors just happen to be China, Poland, and Russia. All of their vessels are government owned. The reason for the tariff was to offset that competition and to assure that our people who are in the private sector, investor-owned, individually owned vessels, were not going to be met by the unfair competition from government-owned vessels.

What is your answer to that? What is the justification of now we will buy our pollock probably from Russia, China, and Poland? It can come into this country under this agreement without tariff, and

we will see a substantial employment base for the States of Alaska, Washington, and Oregon severely crippled by this agreement.

Ambassador KATZ. Senator, the problem of competing with government-owned entities is a problem that has been recognized in the trading rules for many years. And that is where our unfair trading practices rules come in. If it can be demonstrated that there is a subsidy element in the product or that the product is being dumped, there are remedies.

Senator STEVENS. Well, that is not dumping; it is just they do not have to pay for their vessels, they do not have to pay the costs that our people pay.

Ambassador KATZ. There are also provisions for dealing with state trading entities in our legislation.

Senator STEVENS. I have not found that. Are you familiar with that in this GATT agreement?

Ambassador KATZ. It does not change the existing arrangement.

Senator STEVENS. But under the existing arrangements, that is why we had the 4.1 cents per kilogram tariff.

Ambassador KATZ. Well, let me put it this way. If you were competing with a government entity and that government entity was determined to sell into your market, no tariff would protect you. That is where the other unfair trading rules come in. I mean we have had these problems in a number of other areas. I am not familiar with the problem you cite.

Senator STEVENS. Well, currently, the fleets I mentioned take their pollock to Japan or Korea, sell them there, and the Koreans or the Japanese export to the United States. When those exports get to the United States, they pay 4.1 cents. Now, the people in Korea and Japan that buy the pollock from the foreign fleets will not have to pay the 4.1 cents.

I do not understand that. Why should there be this change for that one in particular? The largest reduction of tariff under this agreement is for pollock, cod, haddock, and cusk. Now, we do not happen to produce cusk, but we do produce—practically all of the cod and the pollock that comes to the United States comes from the North Pacific. And I just do not find really any great understanding of that.

Let me go to your petroleum figure. Now, I happen to agree with you on your petroleum figure, because we watched that very closely, since we are a major petroleum producing State. We currently are importing now—over 50 percent of the oil consumed by the United States is imported. That compares to the low thirties at the time of the embargo by the Arabs.

The impact of this agreement, as I understand it, is it does not change the situation with regard to U.S. tariffs. We, as I understand it, could increase or decrease the current tariff rate on crude. We have a tariff on the derivatives from refined crude oil. There is some there. But there is no tariff on crude.

Now, in view of the fact that this is our major problem in terms of our current imbalance of trade and payments, if we are going to reduce tariffs on fish, why did we not increase tariffs on oil?

Ambassador KATZ. Senator, overall, our tariffs, compared to our major trading partners, are reduced by less. I think our overall tar-

iffs are reduced by about one-third to 40 percent; the Common Market's tariffs by one-half.

Now, in this negotiation there were a lot of specifics up and down. I am willing to take your question, but why oil was not increased, as a consumer and as a driver, I am delighted that this is so—this may not please some domestic producers, but I do not think there was necessarily in the negotiation a relationship between oil import tariffs and those on cod and pollock.

Senator STEVENS. Obviously not. But there are some real inequities in this agreement. That has been my point all along. And those of us who represent the States that are harmed by this agreement have no chance to offer amendments to this agreement. It comes to us under a fast track. It comes to us because it is the product of Rostenkowski and Moynihan. And it goes down to the OMB and comes back to us. And we have no chance, no chance at all, to amend it to eliminate this discrimination.

I am telling you that this is going to destroy the west coast pollock and the west coast cod fleet. There is no chance that we can compete with that. That 4.1 cents per kilogram, when you are producing 3 billion pounds, is one tremendous difference. And I think that it should have been thought over.

I really am very surprised that we are faced with a situation where, once again, we have a fast track that we cannot represent our people on.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. I was most interested in both presentations.

Mr. Katz, who specifically do you represent? You mentioned 500 companies; are they U.S. corporations doing international business, international corporations?

Ambassador KATZ. Yes, sir, I mentioned the Alliance for GATT NOW, which is who I am representing today. I am the president of the U.S. Council for International Business, which is one of the founding members of the Alliance for GATT NOW. The Alliance for GATT NOW was founded by the main business associations—the Business Roundtable, the U.S. Chamber, the National Association of Manufacturers. And then, in addition, 500 companies signed up individually to help support the effort.

Altogether, these organizations represent about 200,000 companies, large and small.

Senator DORGAN. Now, is the interest of this group the expansion of the American economy or increases in profits for their stockholders? And the reason I ask the question is when we talk about trade and all of these things, the question of economic nationalism always rears its head. Are you testifying in favor of GATT because you think it is good for the American economy?

Ambassador KATZ. Yes, sir.

Senator DORGAN. Or because you think it is good for the profits of the corporations you represent?

Ambassador KATZ. Both.

Senator DORGAN. Both?

Ambassador KATZ. The two go hand in hand. If you have a depression in this country, as you would if you rejected GATT and plunged the United States and the world into another recession, profits would go down, the markets would go down. So, I see no contradiction between supporting this because I am in favor of growth in the American economy for the workers and for the companies.

Senator DORGAN. But the point I am making is I happen to think that, at its roots, this trade policy is a policy that is largely stimulated and largely accomplished as the result of international businesses being able to produce where it is the cheapest in the world to produce, and then to be able to sell that into established markets. That helps accomplish maximization of profits for production, without respect to where that production occurs.

Is that dead wrong?

Ambassador KATZ. Yes, sir. It is true that the large corporations, and more and more companies, are going global.

Senator DORGAN. What does that mean, "going global"? Does that mean moving production elsewhere?

Ambassador KATZ. Going global is looking at the world market as their oyster, and not just one either local, regional, or national market.

Now, when these companies go global—you know this notion that they are out there to get low-wage imports is very exaggerated. Obviously, in some cases, they do look to source in countries with low labor costs. But, for the most part—and I can provide you with some estimates on this, but I do not have them at hand because I did not think we were going to get into the Burke Hartke debate again—but, for the most part, when companies go global, they are out to satisfy a global market. That means they go in to satisfy the market.

Our investments in Europe—for example, our sales in Europe are close to six times more than our exports to Europe. Those sales account for a good hunk of those exports to Europe. So, when you say that you are displacing jobs in this country because of our investment, it is exactly the opposite. When a company invests in Europe to satisfy that market, it imports machinery and parts to its subsidiary in Europe to sell in the European market. And that is true of going global, whether it is in Latin America or anywhere else.

Senator DORGAN. Well, I am very interested in where production occurs, in addition to where sales occur. And we do not talk very much about that. In fact, you tend to low ball that suggestion that going global often means moving production where you can source production at the least possible cost.

Let me just make this point and you have respond to it.

Ambassador KATZ. Excuse me, Senator.

Senator DORGAN. Yes.

Ambassador KATZ. When we talk about going global, we must realize this is not just an American phenomenon. There are many companies based abroad that are going global as well. And they are going global in the United States. When our companies set up in Europe, generally they do not move production from the United States to Europe. They set up new production. That will require new production in the United States.

When BMW sets up a plant in the United States, they are setting up new production and setting up new jobs in the United States. This is a win-win situation.

Senator DORGAN. Mr. Katz, the trade deficit this year is probably going to be the second-worst in history—around \$140 billion—and we are on your track, the track you suggest. We are on the free trade track. We already have I think some demonstration of how good this is for our country.

And you, by the way, indicated that, gee, much of that is oil. And of course, that does not do much in terms of jobs. That is going to be real interesting news to people in western North Dakota and Oklahoma and elsewhere, where the oil patch has dried up and people are laid off and out of work, and companies are bankrupt.

But, having said all that, you cannot lay this off on oil. The fact is the \$60 billion trade deficit with Japan; the \$24 billion trade deficit with China—and that is not 5-gallon cans of kerosene, that is manufactured goods coming into this country.

So, I guess I ask the question: If the trade policy that we are on now, which is moving toward where you want to go, is giving us a \$140 billion trade deficit, how on Earth can we counsel our country that this is good for our country?

Ambassador KATZ. Senator, the trade deficit is, first of all, a multilateral deficit. You should look at it in terms of our trade with the world. It is true that we have bilateral deficits with Japan which are large; China, and a few other countries. We also have trade surpluses with other countries. But, as I pointed out, the basic reason for this trade deficit, aside from certain bulk commodities, the basic reason is that we consume more than we produce.

We are not a saving nation. And until the savings rate in this country is changed, that deficit is going to be there. It is almost an essential statistical category, an accounting result.

Senator DORGAN. But, Mr. Katz, the major claim that is bragged about by those who support this is the so-called tax cut for American consumers. That tax cut is a reduction in tariffs on goods that are going to come into this country, foreign goods—presumably cheaper foreign goods coming into this country and consumed by the American people. That is precisely what you are now suggesting is not very rewarding for this country. I do not understand that.

Ambassador KATZ. Well, no. The point is that this tax cut is not only a tax cut for ourselves, it is a tax cut for other countries as well. That is where the export opportunities arise. And while this country's import market is essentially open, the tax cuts in other countries—as I mentioned Europe, which is still one of our most important markets—taken together, our most important market—that tax cut means more export opportunities and more jobs.

To go the other way means—

Senator DORGAN. Well, let me just stop you there and ask you a question. If our market is largely open, then where does our tax cut come from?

Ambassador KATZ. From the remaining tariff that we have.

Senator DORGAN. I see. So, to the extent there are tariffs, those reduction of tariffs means more imported goods coming into the United States, therefore U.S. consumers are advantaged by that?

Ambassador KATZ. Sir, U.S. consumers are advantaged net.

Senator DORGAN. Because more goods will come in than will be exported?

Ambassador KATZ. Excuse me. U.S. consumers will be advantaged, first, obviously, as a consumer, by low prices, and by the growth that will occur in the United States of up to \$200 billion annually when this liberalization is complete.

Senator DORGAN. I was just handed some information. You had mentioned shoes, and you said, "Gee, you know, we still make some shoes in the United States." We used to have 250,000 people making shoes in the United States; now there are 60,000. When you mentioned that, as an aside, I wanted to get the numbers.

Let me ask you one other question that I think is important here. I think this is what is at work. We had a person sit where you are sitting one day, a noted economist. And he said: "Inevitably and unquestionably, without any significant debate by people who think well, these kinds of trade agreements will result in lower wages in the United States for unskilled workers." Lower wages in the United States for unskilled workers.

What percent of the labor force is unskilled?

Two-thirds.

Do you agree or disagree with that assessment?

Ambassador KATZ. Senator, I made the point that these export opportunities, in all likelihood, are going to increase or support the trend that Secretary Reich has so eloquently described. And that is that the jobs that will be lost and the wages that may go down relatively will be in the low-skilled area.

Senator DORGAN. And what percentage of the jobs in America would we define as in that low-skilled area?

Ambassador KATZ. I am not sure of that.

Senator DORGAN. If I say two-thirds, would you think that was in the ballpark?

Ambassador KATZ. No, sir. I think we are beginning to change that, and we will have some figures very shortly to show you.

I know that the results cast doubt on some of the recent, shall I say, received or popular wisdom, that there is a two-tier economy, because there is at the same time as this phenomenon is going on, because of the growth in the United States, because of the increased competitiveness, an occupational improvement in the level of American workers. They are climbing the occupational ladder, but I do not have those numbers to give you.

I might say that the existing estimates of trade protection in the United—of trade protection today cost the U.S. consumer, since you are asking about the U.S. consumer, an estimated \$170,000 per job saved. It seems to me that is a pretty high number, at a time when we are looking at an employment situation which is not only stable but improving continually.

Senator DORGAN. Would you agree—are you an economist, by the way?

Ambassador KATZ. No, sir. I have traditionally eschewed that label.

Senator DORGAN. Are you a lawyer?

Ambassador KATZ. No, sir. I am a foreign service officer by training and by career.

Senator DORGAN. I will have the chairman tell me what that means at some point. [Laughter.]

Ambassador KATZ. I have never known precisely what that means either, Senator.

Senator DORGAN. Would you agree with this assessment? I think the moniker "free trade" is really almost totally irrelevant and unimportant, and I think we ought to change terms, because one can say, well, we have got one country who pays prison wages, and another country that has a good standard of living and we reduce the tariffs, therefore we have free trade. So what? Is it relevant? It is not relevant to me.

But do you agree that in the last 15 years or so two things have happened: (a) there are fewer manufacturing jobs in the United States, and (b) the average family in America, and particularly especially the lowest 60 percent of American families in income, have lost real income, and if you agree with those two statements, and I think you would, I think it is documented, do you agree that any of that might relate to current trade policy?

Ambassador KATZ. Very little, Senator. Let me point out that the share of total jobs during six of the last eight decades has fallen not due to competition from imports but due to the gain in productivity in manufacturing itself. The only exception to this generalization were the decades including the two World Wars.

Now, the number of production jobs in manufacturing is essentially the same today as it was in 1946, yet the output of manufactured products went up about 500 percent. That represents a trend of growth and output per worker of well over 3 percent annually. Since 1977, the gross value of U.S. industrial production increased about \$600 billion, or 44 percent.

Now, manufacturing's share of the overall economy dropped only slightly, and in fact fluctuated in the total GNP somewhere between 25 and 22 or a little lower percent, but it keeps changing, and that is mainly because of the increased weight of services in our economy.

Within the manufacturing sector, there has obviously been enormous shifts, shifts from textiles and apparel, for one thing, to aircraft and computers and electronics. We are doing different things in our manufacturing industry, but I do not think one can say that the U.S. manufacturing sector has been decimated by trade liberalization.

Senator DORGAN. Well, Mr. Katz, I was asking, really, is the reduction in several million manufacturing jobs and the reduction in real income for 60 percent of American families related in any way to a trade policy that I think by virtue of this year's trade deficit is a miserable, miserable failure, but the chairman is chomping at the bit, and I have overstayed my welcome on this round.

I have about 150 more questions for Mr. Katz and a couple of hundred for Mr. Donahue, so I would like to ask a few more questions.

The CHAIRMAN. Go right ahead.

Senator DORGAN. Let me defer to the chairman for a bit, and then Senator Pressler wants to ask some questions as well, but thank you very much. Mr. Donahue, I do have some questions for you.

The CHAIRMAN. I have got so many notes down here.

Ambassador Katz, you laugh. I think of Lou Nizer, and I do think you are an honest man, but he says an Ambassador is an honest man employed to lie for his country. [Laughter.]

And I think you are an honest man, and as a result, you are making a good witness. [Laughter.]

Look, this oyster—jimony, if tax cuts open the market, then why is Mickey Kantor running around trying to beat Japan over the head with super 301, and by the morning paper ready to yield again on financial services?

We did not get an agreement with Japan on automobiles, we did not get it on financial services, you do not get it on worker's rights, you do not get it on the environment, and yet you good, big business people come forward before the Congress and tell them, you are winning. You are winning. You are doing great.

Specifically, since the Senator from South Dakota wants to be specific, we will be specific. Now, you talked about this oyster. We have got a deficit in the balance of trade, a \$60.4 billion with Japan, \$25 billion with China, Thailand \$2.3 billion, Taiwan \$8.9 billion, Singapore \$1.1 billion, Korea \$2.3 billion, India \$1.8 billion. All of those are deficits, or less exports to them, since you want to use the lingo, exports. All of those deficits in the balance of trade in manufactured goods, not oil. That is the so-called oyster. And Europe I just recall now, and the 1993 balance of trade with Europe was a deficit of \$1 billion.

You remind me of that fellow in the boxing match, he keeps getting hit, he goes back at the break of the round, and his manager tells him "you are doing fine, you are doing fine." About the 10th round, he can barely stagger, he is almost totally knocked cold, he falls on the little stool, and his second keeps patting him in the face, saying "you are doing great, he has not laid a glove on you, he has not laid a glove on you." He says, "well, watch that damn referee, because somebody is beating the hell out of me." [Laughter.]

I want you to watch out, because somebody is beating the hell out of us in this thing. I mean, you come up here with all of this wonderful thing of the oyster, but you and I know it is a stonewall.

The tariffs that you call tax cuts that are not tax cuts, they are lowering the costs for that overseas production. We use a 10-year figure, and I am trying to get an update for these hearings.

We know that the multinationals produce 40 percent of the imports coming back in here. They have moved the production overseas, so we are trading with ourselves, but our production has moved, goods are coming back in, and those are the figures, and they are the record, with no oil and all deficits, Europe included.

Now, with respect to the Smoot-Hawley, I will ask that the record be made out of the Congressional Record. Former Senator John Heinz, Jack, and I used to have this discussion every time we passed bills in the seventies and eighties. I would use his record made probably in the 1982 debate on Smoot-Hawley. At that particular time, international trade affected by Smoot-Hawley was about 1.3 percent of the GNP. Today, international trade is 15 percent of GDP.

In addition thereto, Smoot-Hawley only affected one-third of the trade, and the deficits were in the two-thirds just as much as the one-third.

Incidentally, it did not cause the crash. It was only enacted by the Congress that you were laying the blame on in June 1930, 8 months after October 1929, and incidentally, it led to the reciprocal trade, the reciprocity, and that is the kind of trade policy we are looking for, under Cordell Hull, and by 1934 then we moved into a plus balance of trade with that reciprocity.

So, you come to the uneducated, and you haul off Smoot-Hawley, Smoot-Hawley, Smoot-Hawley, and that record ought to be cleared.

With respect to textiles, you use a figure, 77,000. Let me get right to the real figures. They had a study made. It started in the Department of Commerce. I did not realize we were going to have you as a distinguished witness here this morning. You might have been at Commerce at the time.

It was a good study, and it showed that there was going to be 1.1 million loss of jobs with the phaseout over a 10-year period of the multifiber arrangement, and the lady over at the Special Trade Representative's Office then got the study. She later left, but we knew that Ambassador Hills had seen it and talked about it, and we tried to get it. Ambassador Kantor comes and says, "Look, if I had it I would give it to you."

Well, we could not surface that one. They deep-sixed it. So, we went to the Wharton School, and we asked for the Wharton School study of the 10-year phaseout of the multifiber arrangement contained in this GATT, and it projected not 77,000, it was 1,399,000 jobs lost over the 10-year period.

This became an issue in the NAFTA debate, and in the NAFTA debate, the President of the United States wrote a letter to Congressman John Spratt of South Carolina inducing him and others to go along with the so-called NAFTA agreement and said in return they would not phase out MFA over 10 years, that in the GATT agreement it would be 15 years to get the 15-year phaseout. They just gave up, and they did not fulfill that commitment to us, so we feel it very keenly.

There are two other parts of it I feel keenly. One, the matter of low skill. There is a sort of smug feeling that we are going to be all high-skilled here in the United States of America, and the rest of the productive world is going to be low-skilled. I heard that back 35 years ago when I was testifying before the old Tariff Commission.

The whole situation has changed in this global economy. All jobs are high-skill jobs. Go into a textile plant, and where they used to have the looms with about 500 to 600 picks, there are 3,500 picks. You have got to be expert.

The most productive in the world, of course, is Milliken—and incidentally, this press crowd is puzzled. Let me just put it on the record. If they find in the records—and we politicians make financial records of every dollar in and every dollar out, and mine are open, and they are filed with the Secretary of State, and they are filed with the Secretary of the Senate, and if they find that Mr. Milliken contributed to Fritz Hollings, I will jump off the Cooper River Bridge.

I get these snide stories. I get these snide stories, but he is the most productive—he is the most Republican, too, but he is the most productive down there, and the jobs that we find are fundamental and really important to our economy and many of those jobs are for women and for minorities.

In fact, I participated in a debate over 13 years ago about \$5 billion we were going to put up in the U.S. Congress for minorities and women to try to promote employment.

But the fact of the matter is that they are very skilled, and I know the workers in those plants, and I can go next door and see them at Digital, making computers. I can go and see them at GE making MRI's, I can go now and see them making automobiles at BMW, and I can look at just the skills being used here, what you would talk about textiles workers and automotive skills, compared to the textile workers.

Now, you said you were surprised, and that picture ought to be completed, for the simple reason that there are those in the industry that are grateful for any little favor. They have been on the ropes so long, like the shoe industry. They have been going out of business.

When I testified back 35 years ago we were threatened with 10 percent of the American consumption of textiles which would be represented in imports. Today, over two-thirds of the clothing in this room is imported.

And incidentally, you are talking about shoes, I know about Timberland. I have been through their New Hampshire plant, and they do ship shoes to Italy. It is interesting how they do like the heavy shoe over there in Italy, and they are really making a good market over there, but that is the exception.

Eighty-six percent of the shoes on the floor here in this room are imported, and when you get down to that level, it does not pay in that stock market with the Fortune 500 to invest, to upgrade, to get the better machinery, to get and upgrade the greater productivity.

You do not get the increase in productivity, and as a result, you find out we lose jobs, like we have in watches. They might do some repair jobs for Timex in Arkansas, but I brought Elgin from Elgin, IL, to Elgin, SC. I renamed the town. That was one of the gimmicks we used. They do not make watches in South Carolina any more, and we have also lost the VCR's, radios, TV's, all the electronics.

You say it does not hurt you at all, that this globalization or liberalization does not get rid of an industry. It is getting rid of them left and right. You better watch that referee, because somebody is beating me to death.

We have got these so-called rules of origin they should not be using—to cut the cloth in the arms and the legs and so forth in Hong Kong and let it be sewn together in China, and then bring it through the Hong Kong corridor. That is what they talk about.

When they changed the rules of origin in this bill, I did not figure that was any particular favor. I was looking at the phaseout of MFA, the multifiber arrangement. That is why the head of the ATMI said that they were surprised at my opposition to GATT. I have got the heads of many other industries, and other textile com-

panies, that say under no circumstance go along with this GATT. So, there is that division.

What really has occurred—and that is why some of them were for NAFTA, which sort of really gotten in my craw—is when we went—and I have passed five textile bills over a 27-year period up here, four of them vetoed by the President.

I got my votes and help from the garment workers. I have got 40,000 of them in South Carolina, and we got over 1 million in the country, but we are going to lose them.

I could not get from the woolgrowers any more votes. I used to, back in the fifties and early sixties. In fact, Dick Darman's father, Morton Darman, headed up the American Wool Growers, and he sat with me when I testified back in 1960, and so I know that.

But I could not get up there in the Midwest any of those votes, because they were voting agriculture, and they were not helping us with textiles, and I had to go into the inner city of New York and Los Angeles where they have got 92,000 garment workers down in the Bowery, and they have got 6,000 or 7,000 in Watts, and they helped me get the votes.

The textile leadership, the big boys, with just the broadcloth, with the towels and the sheets said "we do not fool with the apparel because you have got to fool with the apparel workers," and so they sort of divorced and said they would have to fend for themselves, and I thought that was about as unfair a reaction and position to possibly take.

And so in that light you find that division, Mr. Ambassador, because yes, the head of the ATMI might feel that way, but this Senator does not feel this way. He knows where his bread is buttered and who has gotten the votes and who has really supported him, and I am very keen about those workers and the workers' rights, and you will understand my feeling.

I went down to Tijuana last year, and down in Tijuana I met with some fired employees. It so happened they had worked in a plastic coathanger factory that had moved from California down to Tijuana. In January that year they had a terrible rain and flood down there. But if you see how they live, they live in mud. It is a disgrace to American capitalism and the Fortune 500. Tell them to go down there and look at what they do.

There are no water lines, there are no toilets, there is no electricity to speak of. The fact of the matter is, if you want a light that hangs down and a TV, you have got to put your TV on a car battery, and I was going through those houses made of five old garage doors.

Because of that flood—they missed a day of work, because their houses swept away in the mud. When they got to work the next day, they were docked 3 days. If you miss a day, then you are docked 3 days. They lost 4 days' pay.

A worker lost his eye in February, and that really got them disturbed, and then when the supervisor, Mr. Ambassador—she was the most popular, she was expecting, and became ill in the afternoon and went to the head office and said, "I have got to go home, I am ill." They said "No, you are going to work, like it or not." She miscarried.

The workers said, "This has got to stop." So, they went up to Los Angeles, they employed a lawyer to get a union organized, and you know what they found? They found they had had a union for 3 years. Before they moved from California down to Mexico, they signed the papers and fulfilled the legal requirements. They had never seen a union organizer or anybody connected with the union. The legal people said they had a union, and it had docked them so much pay, and the lawyers were making money in the scam, I call it. But since they tried to organize a union, 12 of them were fired.

Now, those are the labor rights you have got in Mexico today. These are the kinds of things we are talking about, not just textiles. The 28,000 who have been fired from Boeing, that Washington crowd is going to wake up when they find out they are losing their fishing jobs, when they are losing their aircraft jobs to China. They will finally join us in textiles.

I am interested in the IBM 60,000 that have been fired. I am interested in General Motors, and the 71,000 fired there, and incidentally, since we are getting it on the record, NAFTA is not working for the good of the United States. We have shipped down there 17,000 cars, but we have imported 154,000 cars.

Honda, Nissan, Chrysler, General Motors, Ford have all announced they are opening new factories or expansions down in Mexico, and 244 industries have applied for economic assistance at the Labor Department because they have lost their factories already in the United States down to Mexico, and what will happen with GATT as we try to build up the economy of Mexico?

Now, Mexico will be competing with China. China will be into this GATT within 2 years at the latest. They are all moving to get it into GATT. India is in it, and I can tell you right now they are not going to be able to compete in Mexico. GATT is going to hurt Mexico just like it is hurting agriculture.

Everybody was surprised at Chiapas. I wrote in my article, incidentally, on "NAFTA for Foreign Policy" that all of those agricultural workers in Mexico were all going to be displaced.

Incidentally, I sent it, Mr. Donahue, to the labor union in Tijuana—I think that is the first contribution I made to a labor union. I am the author of the right-to-work law in South Carolina, but I did send my \$500 for Foreign Policy magazine to you folks down there in Tijuana. I told that little lady, keep on organizing. I might end up a union organizer, before I get through.

MR. DONAHUE. We would be happy to have you, Senator. [Laughter.]

THE CHAIRMAN. Yes, sir, but you can see the feel that we have, expressed by Senator Dorgan and others, that we know it is not working. "This Rising Tide Does Not Lift Clinton," the headline says tell that news crowd there is not any rising tide. The American people realize it and understand it. I read from the front page of USA Today just 2 days ago the New Hampshire worker who said, and he is a medical worker, he said, "You work here, you keep your nose clean, you do everything, and yet you do not have any job security. The next day you can lose your job."

That is that feel—we get all the statistics, from hearings up here inside the Beltway, but out in the boondocks, there is no security

there, and I would be glad to yield. You can comment on the textiles, the ATMI, the skilled workers, going global—it is not an oyster, it is a stone wall, and these tariff cuts do not open up Japan, do not open up Korea, they have all followed, Senator, the Friedrich Lists and Alexander Hamilton models of using trade and the economy—the wealth of the country being measured by production and not by what a country can buy.

Mr. Ambassador.

Ambassador KATZ. Sir, you started setting the record straight on Smoot-Hawley. I want to set the record straight on my side. I did not claim that Smoot-Hawley led to the stock market crash, but there was a preliminary vote on what became Smoot-Hawley on October 29. You are absolutely right, obviously, as to when Smoot-Hawley was passed.

Now, yes, trade was a small part of the GNP at that time, but Smoot-Hawley signaled to the world that the United States was going to solve its problems by itself, and the world entered into a round of raising of tariffs and protection, not only in the United States, but in every other country.

If you believe that the Great Depression was unrelated to the fact that every major country in the world decided to try to solve its problems on its own and live behind its own protective barriers, then—you know, then I do not think—if you think that that is the way to go, then I think you are proposing, in effect, what the logic of Tom's position is—and the notion that we ought to keep all of our production at home, then you are proposing essentially the same thing.

You are proposing that we close ourselves up in our tight little economy and produce everything from pollocks, to textiles, to apparel, and not trade.

Now, today, as was mentioned, 15 percent of our GNP is attributed—goes to exports. Fifty percent of the growth in GNP in the last few years, of the growth in GNP, is attributable to our trade, to our exports, and so, Mr. Chairman, if you propose to go the route of producing everything at home for the American consumer, that we are a big market, we can take care of ourselves, and the devil take the hindmost, then I think you will compound the cost to the average American, which today is \$170,000 per job.

You may save a job, but it is going to go to astronomical levels and, without being an economist, Mr. Chairman, you can be sure that not only will the GNP not grow by the \$200 billion annually above what it would normally as a result of this trade liberalization, but it will contract and cause the same kind—you will see the same kind of unemployment as you did in the interwar period, when we tried to do everything by ourselves until Cordell Hull came forward and realized this was a dead end and started the reciprocal trade agreement.

Senator DORGAN. Mr. Chairman, might I just interject one point?

Mr. Katz, you just won a debate that we did not have, and it is so typical of this discussion. In every instance when you begin discussing trade, someone who takes your position immediately says, well, your position, Mr. Chairman of shutting up our country into a protective little barrier with high walls—you can go ahead and

have that debate and win it in 10 seconds, because it is a debate we are not engaged in. No one—no one is suggesting that.

The question is, what is fair competition? We should, and we must, compete and win when the rules are fair, and one of the questions I wanted to ask at some point is, what in your judgment is unfair competition? Should an American producer be required to compete with a producer elsewhere who pays 14 cents an hour wages? Is that fair or unfair?

If you think it is fair, then I say, how do you think we can win?

Ambassador KATZ. Well, Mr. Chairman, right now we are complaining about a Japanese surplus into this country of \$60 billion. On the current exchange rate their average wage level is higher than ours.

So, you know, trade does not take place——

Senator DORGAN. That was not what I was asking.

Ambassador KATZ. Well, yes, you were, because you were in effect saying that trade takes place, that the low-wage country can outcompete the high-wage country, and if that were the case, Haiti would be a metropolis, you know, would be the leading trading country in the world.

Senator DORGAN. There is no production in Haiti because there is no stability in Haiti, and no one will invest in Haiti.

Ambassador KATZ. And because there is no productivity in Haiti.

Senator DORGAN. We lose to Japan because Japan largely keeps our products out and because it sells its products into this country often at a price that is designed to undercut our producers, and second, I would say that most producers selling into this country, in fact 73 percent of foreign producers selling into this country are paying zero in income tax, which also lowers their cost, and that is a tragedy.

But my question was about the less-developed markets with the very low wages, and we are losing a substantial amount of production going to those countries where you can produce at very low cost and then with no entrance requirement come back into the established markets and sell, and my notion is, there is a disconnection then, because we used to receive for consumers a stream of income that they got from being part of the production process. That stream of income was used to clear the production off the shelf.

We disconnect that when we circle the globe with corporate jet and say, where can we produce this for the cheapest possible wage and then where can we access the most lucrative market and sell it.

And my question to you is, very specifically, with respect to the low-wage countries, do you think an American producer who set up today over in Laurel, for example, is competing in a set of fair-competition circumstances if they are trying to compete against someone making the same product who pays 14 cents an hour in Indonesia and the fellow over in Laurel is paying \$12 or \$14 an hour? Is that fair competition?

Ambassador KATZ. Mr. Chairman, Senator, it is as fair as the difference in wages within a country. Wage differentials are not the determinant of trade. The corporate jet circling the globe looking for a place to invest, some of them, as I said, are looking for low-cost sourcing, that is true, but that is a relatively small percentage.

They are looking at the dynamic markets of Latin America and of Asia as huge opportunities, and there is shipping into those markets. Our exports have increased in those areas much faster than in the rest of the world, and our members, for example, are very anxious to expand NAFTA because they see tremendous market opportunities in Latin America. Not sourcing opportunities, market opportunities, selling and investing and exporting.

The CHAIRMAN. Mr. Ambassador, No. 1, on your assertion that wages are not a determinate. We had the best of the best come last week, Sir James Goldsmith, in addition to others, who had confirmed, and anybody in business would have to agree, that the wage cost is anywhere from 20 to 30 percent of your volume.

They got into the analysis where the cost of one U.S. worker was 80 in China, the cost of one, you could get 40 in India, 24 down in the Philippines, and with the costs on your sales volume of 25 to 30 percent, if you could save 20 percent of it; namely, if you had a \$500 million corporation you could save 20 percent of it by just keeping the executives and the sales force back in the head office, but sending your production offshore, you could make \$100 million. Wages are a determinate.

Whereas, if you stay and continue to work your own people, your competition is making that \$100 million and you go bankrupt.

Now, that is the game that we are in. That is why your crowd has not created one net new job in 15 years.

Now, let us get back to the so-called wall, because everybody jumps to the conclusion that we want a "wall"—absolutely impossible. Let us assume the extreme that you describe and you said I attest for. Not at all, because even if I wanted it I could not put a wall. Not in this dynamic here of global competition. You can transfer capital anywhere in the world on a satellite; you can transfer technology anywhere in the world on a computer chip; and with that and the workers available the world around; namely yes, that Pacific Rim market, I could not do it if I wanted to. But I want to hold on to some of these things.

I know, for example, back in 1961 we had a specific hearing with the Secretaries of State, Labor, Commerce, Treasury, and one other one—Defense. The law said that before the Executive—namely, President Kennedy—before he could promulgate his seven-point program for textiles there had to be a finding that the product was important to our national security. And after the series of hearings held by that Cabinet group they found that textiles was second-most important to our national security, second to steel. Namely, you could not send our troops down to Haiti in a Japanese uniform.

So, are we going to get rid of all jobs, let it all go, and keep everybody making money? You folks got into the discussion of low wage. It annoys me that I know the Yankee trader out there is the most competitive—this crowd here in Washington thinks they create competition. They are full of baloney. The Yankee trader, the average American businessman out there, is competitive as get-out. I have to go on the floor of the Congress and hear them holler, "Get off the golf course, get off the golf course," and all that. No, they are competing and they know how to move and how to stay ahead of the curve. And I respect them for doing it. You cannot blame them. They have got to make a profit.

But the corporate entity that is engaged in making profits and dividends for their stockholders is not the financial service or corporate entity in downtown Tokyo. That is a sociopolitical entity. None of the better or the best in Boone Pickens found that out. He bought 25 percent of a Japanese corporation, went, and could not even get in a stockholders meeting. He thought he would really embarrass them since they had community property in Texas. He said, "Well, my wife, she owns half of this, 12.5 percent of my stock. Can you let my poor wife in?" No way. There are interlocking directorates.

Where 4 years ago I remember in that particular hearing, yes, the Japanese lost over \$2.3 billion in selling automobiles in the United States. A Toyota Cressida selling for \$21,800 in the United States was selling in downtown Tokyo for \$31,800. They lost on every automobile they sold, but they made up back in the domestic market some \$11.1 billion. We would not stand for that in your and my United States. But that is the competition. Not any rat-a-tat-tat about exports and tariffs and calling tariffs tax cuts. Let us get into the real world and understand what the competition is. And as old Franklin Roosevelt did during the days of the depression, in order to keep the banks open he closed the doors, in order to save the farms he plowed under the crops, and today, taking a page from FDR in order to remove a barrier you have got to raise a barrier, not whine and cry about being fair. Business is business.

They do not have this rancor in Europe with the Pacific Rim. They enforce their laws. And yes, if it takes you 4 months to inspect a Renault delivered on the docks in Tokyo, deliver that Toyota on the dock there in La Havre, France, and it will take 1 year. You cannot buy a 1994 Toyota until January 1, 1995 in Europe. So, they know how to play the game.

But we are given these lectures like the little train: I think I can, I think I can, I thought I could, I thought I could. I heard that from the distinguished colleague here on my right in previous debates. We are down to really America going the way of England, which has turned into the amusement park of the world. They have got the superrich and the superpoor. Except for a few Rolls Royces, they are not producing a single car. They are not producing anything. In fact, they are investing all their money here in the United States.

But I had to correct that record so we will understand it is just not the low wages, it is the high wages. Yes, they are making more in Japan. In fact, here I am the conqueror, I am the victor in World War II, and I give them my Marshall Plan, I give them my technology, I give them my new machinery, and they come along and work hard in using it and using their keiretsu and their MITI approach, and the per capita income in Japan exceeds the per capita income of your country and mine. Japan is richer than me. Does that not bother you? It bothers me.

I do not see why when here I have got all this productivity, leadership, technology, and everything else, so something is wrong with what we are doing, and I keep making all of these. From the last so-called Tokyo Round of the GATT we have lost 3.2 million jobs, and the jobs that we have now are only part time. The real worker is taking home 20 percent less pay. So, I know I am headed in the

wrong direction. I am not competing. I really think it is the policy that we have here in Washington that forces American industry to invest and produce overseas, and I want us to get hold of ourselves and change that policy and quit fast tracking and not even discussing it and not even understanding it.

I would be delighted to yield.

Ambassador KATZ. Thank you, Senator. In the first place, I think the record will show that we still have a much larger GNP than Japan.

The CHAIRMAN. Oh, we are a bigger country than Japan, but I mean the per capita income, you look at what they were making at the end of the war and what we were making.

Ambassador KATZ. And I think it depends on the vagaries of the yen-dollar exchange rate, but—the per capita GNP in the United States is larger, and the U.S. economy, according to this Davos Symposium, has downgraded Japan and upgraded the United States to the most competitive economy in the world today.

Now, I think—

The CHAIRMAN. Suppose you were going to the APEC conference with Japan. Now, you are going out there next month and you are the President of this country, and you have got a \$160 billion trade deficit, a \$160 billion hole in your pocket, and that other crowd have all got pluses, and you are going to tell them what to do? You are going to lead?

Ambassador KATZ. If I were the President of the United States I would not be fixated on that number, I would be fixated on the GNP growth in the United States and the declining unemployment rate in the United States, the fact that labor is even getting tight and some people are calling for stepping on the brakes so that we do not overheat, whereas in Japan the situation is quite different. And yes, their official unemployment rate is lower than ours, but that is because there is a good deal of disguised unemployment, there is a good deal of holding onto workers, they pass—on to companies, in other words, rather than having the government pay unemployment it is the companies that are paying it, and the companies are hurting, and it is quite clear that the Japanese economy is not doing as well as ours. So, I think the President would not be embarrassed at all by the \$60 billion trade deficit with Japan. He would be rather proud of the economic performance of this country, in the 2 years of his administration.

The CHAIRMAN. Mr. Donahue.

Mr. DONAHUE. May I—lest I be impeached by some who assume my silence is somehow agreement with anything my friend Abe has said, I was sitting here thinking that I know how Mr. Sullivan felt when he said "What am I, a potted plant?" I understand his feelings.

Let me just make a couple of points. The trade deficit figures are as clear as any figure we have. We are going to have \$160 billion trade deficit; we are going to have \$130 deficit in manufactured goods. That is not oil, that is manufactured goods, \$130 billion trade deficit this year. If that leaves \$30 billion, I am not sure how that becomes the bulk of our deficit. Mr. Katz said the bulk of our deficit is in petroleum and petroleum products. Maybe some petroleum products indeed become manufactured goods, I do not know,

but bulk would be \$80 or \$82 billion, and that is simply not the case. Our deficit is in manufactured goods.

I am always fascinated by the fact that we engage a great deal in this country in debates about the need for balanced budgets, but we just do not care about a deficit in trade which has cost us \$1½ trillion over the last dozen years. We simply ignore that. We not only ignore it, we embrace it and we say this has been obviously very good for us, we are going to make it bigger. We are going to continue down the same path, only go faster, so we can have an even bigger trade deficit. But maybe we can solve the problem if we all save money. I mean, maybe that will change the dynamics. I have heard that argument from economists as well as from my friend Abe for years, and it is just a turning of everything on its head.

Abe Katz said that he and the people he represents believe that there ought to be a "broad-based training program for those who are displaced." This Congress and this Nation made a compact with the workers of the Nation in 1962 in the Trade Act and said there will be some displacement that follows opening up our trade, and with that we will guarantee a trade adjustment assistance program for workers so displaced. That is a promise that has been torn up piece by piece by piece since then, and the business community now insists that it be destroyed entirely, that even the language which exists for a TAA be done away with.

We will "have a broad-based training program because everybody should be trained, everybody should be eligible for retraining." That is a wonderful concept. I embrace it. I would be happy to see such a program develop. There is not a chance in hell of such a program being developed within the next 20 years given the budget deficits that this Nation faces. So, I just want to make it very clear the attack on trade adjustment assistance is the meanest, most vicious piece of what is happening to us in trade. It is the destruction of a compact that was made with American workers that, yes, yes, there will be some displacement, but we will retrain you. We will tide you over until another job is available. That promise has been shredded and destroyed.

Abe Katz said no industry has been destroyed by trade liberalization. I would ask him how you define industry. Does that mean the CEO sitting in his office? Does it mean the 5,000 employees of Nike in this country who sell shoes that are made in China? Maybe Nike is not destroyed by that. GE and RCA and Motorola and the rest are not destroyed. They are still selling televisions with their label on them, so I suppose the industry has simply, in his words, simply been rationalized. But we do not make televisions, electric appliances, sneakers, or clothes in this country anywhere near the levels we once did. And to pretend that going global is an investment in another country in order to satisfy that market just boggles my mind when I think of the investment in Indonesia, Thailand, and Malaysia, Mexico, for one, the Dominican Republic, and in Haiti, where probably 40 American corporations will be operating again very shortly. So, as inefficient as it is, there are those American companies who have found profit in paying 60 cents a day in Haiti and they will be happy to go back in and do it again.

We are incapable, Mr. Chairman, of dealing with the problem of individual nation deficits in trade because we have no position on which to ground such a negotiation. We have said we have to have free trade in the purest and most wonderful sense. How, then, do we move from that position? The problem we have with the Japanese is that we are hung up in that ideology so we dance with them about whether we are measuring performance or whether we are going to take absolute numbers instead of saying to them reduce the deficit 10 percent a year and come back and see me. And if you do not, I will.

The Yankee trader you referred to was a hell of a negotiator, and we are no longer that negotiator. The agreements that we have negotiated do not serve the interests of this country. This agreement ought to be rejected. And I assure you—I guess I cannot deliver that assurance—but it is my firm belief that no worldwide depression will occur. I would submit to you this agreement was going to be finished in 1990. Here we sit in 1994 talking about our ratifying it, other nations to come, and the world has not fallen apart in the last 4 years.

I submit this agreement ought to be rejected, we ought to go back to a bargaining table, and we ought to behave like the Yankee trader that you referred to, Senator, and we ought to begin by negotiating against the subsidies which are given to American companies producing in these nations by the exploitation of low-wage workers and by the failure and refusal of those countries to grant worker rights. That failure and refusal, supported by the companies that Mr. Katz represents, those companies having conspired with the Indonesians, with the Malaysians, with the Thais, to maintain export zones, keep the unions out, deny workers their rights, put them in jail in Indonesia, is the record of American business abroad. I submit to you that we ought to redefine what is an American company, and we ought to think that they have to have some loyalty, some base, of interest in this country other than the payment of stock dividends to their shareholders.

I think the agreement, Mr. Chairman, ought to be rejected. I think that we can go back and negotiate well and negotiate in the interest of the people of this country as workers and as citizens, not just as consumers. The fiction is offered to us that these negotiations are wonderful because we will all benefit as consumers. We will all be out of work, as well, and so we will not be consuming very much. Mr. Katz talks about unemployment rates in Japan at, as he put it rather euphemistically, somewhat lower than ours. Less than one-half—less than one-half—is the phrase. Ours masks just as much unemployment, hidden unemployment, as theirs does, with people who are too discouraged to find work and so forth.

This agreement was conceived as a way of managing trade in the world, and it turns out to be the U.S. defense of the ideal of free trade, which does not exist in anybody's mind but our own. It is the abstraction that we are married to and that neither the Europeans nor the Asians nor the South Americans are prepared to ascribe to beyond signing their name to a piece of paper which they think will probably not be enforced.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, the figures, they use are just sort of out of whole cloth, Mr. Ambassador. You said here, for example, that the loss of production due to delaying GATT would be \$70 billion. Well, the World Bank study found that over the 10 years the GATT agreement would generate \$160 billion. But you find from just a 6-month delay where you have got until July of next year to agree to this, you do not have to have it on fast track, you do not have to have it on a lame duck session, but you have got a \$70 billion loss. What really is involved is the standard of living, the social fabric. When you lose these jobs you are talking about economic assistance. That increases welfare. We are trying to cut back on the welfare problem, not increase the welfare problem. You get unemployment compensation, you get trade adjustment assistance, and your health costs go up, your community costs go up.

Specifically, I mentioned about the 92,000 garment workers in downtown New York. Everybody says they are against crime, they are for policemen on the beat, three strikes and they are out, let us build the prisons, build the prisons, build the prisons. The fact of the matter is we do not need to build prisons. We need to maintain jobs. The social unrest and dislocation and tear to the social fabric is just foremost in mind. That is middle America. The President of this country said he is for middle America. He has abandoned them completely with this GATT agreement, I can tell you that right now. That is what is causing the trouble in the inner city, no opportunity.

Another politician on the other side of the aisle comes in and says we need enterprise zones, enterprise zones, enterprise zones. Well, they are by gosh killing the zone with this GATT. That is exactly what they are doing in the inner city where we have got these jobs, in Watts and everywhere else around of that kind. They do not need enterprise zones; they do not need prisons. We need a competitive trade policy, something realistic that tells the American businessman that the honeymoon is over. They are just going over and making a big killing with this labor overseas making you \$100 million richer and if anybody stays here they are going bankrupt. That scene is removed from America and we are now going to begin to compete here at the Government level here in Washington.

Let me yield for any comments either of you have. Our time is about up here, but we would be delighted and will keep the record open for any questions other Senators have.

Ambassador Katz.

Ambassador KATZ. Sir, first on the trade deficit in response to Tom Donahue and some points that you made, it is just an accounting verity that if you consume more than you produce in this country and save less than you invest that there will be a trade deficit, no matter how many markets you open. Now, that is incontrovertible.

On the question of training, yes, I know that there was a promise made to the American workers, and I can understand that AFL-CIO does not want to give up this entitlement. I think that Secretary Reich is moving in the right direction in trying to consolidate the problem of training and retraining of workers. I know that there are budget problems to this. I can understand the trade

unions' reluctance to give up an entitlement in the absence of some real promise on the other side. But looked at from a business point of view, the worker who loses his job because of a change in technology, the worker who loses his job because of a change in imports, the worker who loses his job as a result of a cancellation of a defense contract, all merit the same treatment. And right now we have a situation in which there is a tremendously complex accounting procedure and different arrangements for different workers with a result in TAA in terms of reemployed workers of very low yield compared to some of the other programs. I am talking about workers who find employment, because TAA for the most part has turned into an income maintenance program, you obviously need some income maintenance while you are training, but the results are very poor.

Finally, Mr. Chairman, I do not believe that we all want to see a country made up of Nike producers or the equivalent thereof. And Mr. Donahue was right when he said it really depends on what you mean by industry. Obviously, within an industry, and I made the point, certain sectors are going to go down in production and others will go up; certain companies will go down, others will go up; and the proportion of winners and losers in each industry is going to differ. But if no more transistor radios are made in this country, it is clear that this country is the leader in the most sophisticated electronic innovations and production.

Finally, Mr. Chairman, something has been said about corporations investing and not producing jobs in this country. I will try to send you for the record a study by the Emergency Committee on American Trade, one of the constituent members of this alliance that I am representing this morning, which demonstrates that multinational investment overseas has led to a large growth of production at home and to a large growth in employment—in this country. And I will submit that to you for your edification and possibly for the record.

Thank you, Mr. Chairman.

The CHAIRMAN. Before Mr. Donahue—I just wanted to make sure about our friend Don Kendall, because Ambassador Katz mentioned ECAT. Oh, Lordy. Don Kendall with Pepsi Cola, you know, he was financing Dick Nixon to go debate in Moscow, the famous kitchen debates. And Brezhnev later showed me his belt buckle Pepsi Cola. Hubert Humphrey and I were over there. You do not ship water around the world, you ship extract, so ECAT, the Emergency Committee, and Don Kendall were gung ho for all this giving away because I can sell my soft drink extract and not have to ship water around the world and make a killing. And then later, he came out against the free trade policy with Japan. He said he had headed up that ECAT long enough and he wanted to make it clear. But just keep reminding me of ECAT. Do not let us go back that far.

Mr. Donahue.

Mr. DONAHUE. Senator, I would just offer a couple of quick comments, one on Smoot-Hawley. I think you and I might like to conspire to write a book sometime to clear the name of these two worthy legislators, one of whom was a rather staunch conservative and who introduced what was a very modest bill, which was then en-

larged as it moved through the process. But it would be interesting to take a look. I have read their biographies, and they deserve better treatment than they are getting.

I would solicit your help on two subjects. One, as the debate on this, the discussion on the GATT implementing legislation moves forward I would hope that there would be voices in the Senate, yours among them, talking about workers rights and talking about the failure thus far of anybody in the world to agree with us on putting together a working party on workers rights if the GATT is adopted. At least we ought to have conditional participation until there is some performance by other countries on that subject.

And second, I would solicit your help, and maybe Abe would be willing to join in since he thinks the record of American business in creating American jobs is so good on information gathering. I have thought for a number of years that it would be a significant development if somebody could change the SEC forms that corporations are required to file in a most simple fashion. Just ask the corporations to list thereon the U.S. employment for the year reported on and the employment overseas of their corporation and their subsidiaries. It would be a fascinating measure of these American companies that we are defending to know how many jobs does Texas Instruments have in the United States and how many does it have in Taiwan and Indonesia and Malaysia, and so forth? It would be fascinating to know what the overseas employment of those companies is and what they are really contributing to the U.S. economy. And it seems to me it is a minimal additional disclosure that the people are somehow entitled to. Just tell us how many American employees you have and how many employees do you employ, directly or indirectly, overseas. And I would solicit your interest and support on that issue, Senator.

The CHAIRMAN. We would be glad to. Ambassador Katz mentioned your entitlement. What was he meaning? That you just had these jobs and you were going to hold them?

Mr. DONAHUE. No, he is calling trade adjustment assistance an entitlement because it has become popular to attack all entitlements. I am fascinated that Abe says that the results of this program are very poor. I would submit the results of our experiments with open and free trade are very poor, but he is ignoring all of those results.

Trade adjustment assistance is a promise that was made to American workers. It was a very specific promise. And the effort now is to fudge it up in the name of efficiency. We will not have separate programs, we will combine everything together, in a wonderful effective instrument. It will make the training more efficient, it will do all sorts of wonderful things. Yes, yes, we know we do not have enough money to support it, but that is all right. Sometime in the great by and by we will. But in the meantime, in the meantime, you will never know who has been displaced by the adverse effects of trade because we will wipe out the filings and the need to demonstrate that you lost your job because of the adverse impact of trade on this Nation. So, this country will be deprived of a wonderful set of statistics. We will have nobody who lost their job because of the adverse effects of trade. Everybody lost their jobs

because things are changing generally, the 1 to 2 million people who become unemployed and change locations every year.

The CHAIRMAN. The rising tide—the rising tide—does not lift Clinton because, it says here, that President Clinton created over 3 years 4.5 million jobs, yet the record will show with \$150 billion trade deficit, each billion equalling 20,000 jobs, this year we are going to lose 3 million, just in 1 year, not 4½, in 3 years, and the majority of those jobs are manufacturing. In 10 years, we have gone from 26 percent of the workforce in manufacturing to 16 percent.

Ambassador Katz.

Ambassador KATZ. I do not want the session to end without some remarks on workers' rights. It has been a very contentious issue. I simply want to assure Tom that we are looking very, very hard at what can be done in the present situation of globalization on the improvement of labor standards and the performance on workers rights. As Tom knows, we are going to have a discussion in the governing body of the ILO, which is a tripartite body, in November on this issue. The ILO is the international organization which is charged, and has been since 1919, with raising workers' rights. We will have an examination of this issue in the OECD. That has begun already, and we intend to participate fully in this study.

The issue of the GATT and the WTO is a separate issue. The simplistic notion that you have to enforce workers rights by cutting off peoples' trade, the so-called social clause, is no way to increase the rights of the workers about whom Mr. Donahue is very concerned. It will not help workers in any country to cut off their ability to earn their income and their living. I said that the Uruguay Round results will provide something up to \$200 billion in additional gross national product in the United States. Worldwide, it will, according to the GATT secretariat, produce some \$755 billion in additional trade by the year 2002.

That translates into two things: rising income for workers abroad, as well as rising opportunities for our exports. And the worst way in the world to worry about workers rights is to do what Mr. Donahue's predecessor organization did at about—I think it was the time of Smoot-Hawley and pass something called the cost equalization tax. Maybe that is what this is leading to when one worries about competing with low wages. We just equalize. This would be like the CAP, a variable levy, I guess. If the 14 cents an hour worker in Indonesia comes up across the cost equalization tax, we just prohibit his imports. Luckily, thanks to Cordell Hull and under the Reciprocal Trade Agreements Act, this cost equalization tax, although it was invoked once or twice in the heyday of protectionism by ourselves and by the Brits, this clause, which I believe is still on the books, was set aside because it does not apply to countries with which we have trade agreements. It was recognized that this is the way to kill trade, not to promote it in any way.

So, my point, Mr. Chairman, is that we will work to see what can be done about improving workers' rights, labor standards, around the world. The way to do it, essentially, is to have growth around the world and produce income for workers, and the effectiveness of the ILO must be raised. But the worst way in the world is to think that you could impose this by trade sanctions which would under-

cut the very, very basis of the GATT and World Trade Organization, which is essentially the reciprocal negotiation of trade concessions on a contractual basis. And one cannot, after a contract has been negotiated, come back in and say, "Oh, but we do not like the way you are treating your worker, we will keep you out until you do thus and such."

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Donahue.

Mr. DONAHUE. Just on that point, Mr. Chairman, finally, we have been engaged in the efforts of the ILO for 75 years now to try to develop standards which people are comfortable with in their countries and which they can accept as decent guides for the respect of working people and human rights. It has been a moderately successful effort. It suffers only from the frailty that it has absolutely no teeth, and therefore those who ignore it, ignore with impunity those regulations or those conventions and suggestions for conduct.

The concept that Abe offers that increasing GNP or increasing world productivity translates automatically into rising wages abroad has about as much evidence as the belief that continuing large trade deficits will disappear because we will have more free trade than we have had in the past. There is not a scintilla of evidence in Taiwan—in Thailand, in Indonesia, in Malaysia, in the Dominican Republic, in Haiti, that governments will allow those rates to come up to a decent level or that they will provide the basis for unions to exist in those countries, decent unions, which will seek to raise wages so that people might become consumers. And I need only cite the current situation in Indonesia as the simplest and most obvious and most flagrant example of that.

If we do not talk about having sanctions, then we are just having polite conversation. If there is no endpoint to discourse, then it is just conversation. If there is an endpoint to it, if you must conform or there is a sanction available, then people will conform. That is a simple reality. On the reference to the cost-equalization tax, it is silly to discuss either Smoot-Hawley or anything else that is 60 years old.

The CHAIRMAN. We put in an interest rate equalization tax, you know. You do not do it for labor, but we did that so you could not get a higher return on investment in Europe. But watch Ambassador Katz. He liked that. Go right ahead.

Ambassador KATZ. No, I did not. [Laughter.]

Mr. DONAHUE. I shall not burden the record further, Mr. Chairman.

The CHAIRMAN. Well, very good. I understand the call that we who oppose GATT are protectionists. Let the record show that is the fundamental of government. I will never forget when President Reagan was sworn in the second time, Mr. Ambassador. It was inclement weather so it was in the Rotunda, and the President pledged to preserve, protect, and defend, and it was not 2 hours later we were on the floor arguing about protectionism. We have got the defense to protect us against enemies; we have got the FBI to protect us against crime; we have got the clean air and clean water laws to protect the environment; we have got Medicare and

Medicaid to protect our health; social security to protect the elderly from the ravages of old age; and on down the list. And put me down as protecting the economy of this country.

I have said it before, the health of our Nation is like a three-legged stool, the one leg is your values as a Nation, and that is strong; the other leg is your military power, that is strong; but your economic power or strength, that leg is fractured. And we are in deep trouble, and the biggest part of that deep trouble is what we are talking about; namely, the defeatist kind of trade policy that enriches the multinationals throughout. It measures how much you can buy and what cheap a price you can get for consumers, but we did not come here with the Constitution and the Forefathers to get the settlers a cheap price. They were trying to build a new, free nation, and we have done it with protectionism. The second bill that ever passed the U.S. Congress was a tariff bill, protectionism.

So, Alexander Hamilton was right; Roosevelt was right with agriculture price supports and protective quotas; Eisenhower was right, he put on quotas for oil, since you mentioned it. In 1955, we had import quotas, and we maintain those for our national security, and if we do not turn back this GATT and sober up in this land and understand from whence our trouble is coming, it is not any rising tide. The tide is going out.

I thank you both for your testimony here today.

The committee will be in recess subject to the call of the Chair.
[Whereupon, at 12:32 p.m., the hearing was adjourned.]

S. 2467, GATT IMPLEMENTING LEGISLATION

MONDAY, OCTOBER 17, 1994

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Good morning. The committee will come to order. And we are delighted this morning to have Daniel Brinza, the Senior Advisor and Special Counsel for Natural Resources of the Office of the United States Trade Representative; Ms. Lori Wallach, staff attorney for Public Citizen; Mark Silbergeld, director of Consumers Union; and Brent Blackwelder from Friends of the Earth. We have other Senators momentarily that will be along. Senator Exon.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. Mr. Chairman, just a brief opening statement. First, I want to thank you very much for calling these very, very important hearings. As a member with some questions and reservations about GATT, I think my feelings are shared by a considerable number of the Senators who are going to vote on this come December 1. The agreement and the mechanisms being recommended to finance the shortfall that GATT would create in the income and all of the implementing legislation connected with it is something that I suggest has not been given sufficient attention, and I think these hearings are going to allow not only us but those who will be looking and reading about these hearings some information before we cast what I think will be a very, very important vote. American agriculture perhaps has the most at risk, both pro and con, on the GATT agreement. And certainly, the GATT debate, as far as I am concerned, has to be very broad and encompass a great deal of consideration.

Agriculture is only one of the things that I am looking at with regard to this. I have warned for a long time that Democratic and Republican administrations alike should refrain from writing American farm programs in Geneva. I want to be certain that this or any other agreement does not cut further into an already stretched U.S. family farm structure in the United States. I appre-

ciate the chairman's efforts to give the Congress a full opportunity to study, consider, and debate the merits of this landmark trade agreement.

Now, Mr. Chairman, once again I congratulate you for the courage you have had, and you have received a great deal of criticism for the role that you have played in this. Had the measure been sent over by the administration to the Congress at an earlier date, then the judgment that you made in insisting on further hearings was one that I applaud because I believe that this is such an important matter that we should know far more about it as Senators than most of us know about today before we cast that vote. I would certainly say to you, Mr. Chairman, once again, that you know, I think fully, of my position. I have reserved judgment on the agreement until I have had a full opportunity, of which these hearings are a part, to study this mammoth legislation and discussed its long-term impact with regard to the Nation and to my State of Nebraska. These hearings, Mr. Chairman, are going to be helpful to me in this process, I think helpful to all of us, and I congratulate you on those that you have selected to come here, pro and con, on this issue because it is a tremendously important one, it seems to me, and I think that these hearings at least are going to help this one Senator in reaching what I think is the correct decision.

The CHAIRMAN. I thank you, Senator. I accept the kind remarks. I need them these days. But the fact of the matter is that I could not hold any special session. The leadership and the White House called for this special session, not incidentally, for health reform; not for welfare reform, not for the information superhighway, but for a matter that we have until July of next year to consider and vote upon. So, they are the ones that called it. I wish I had that power.

But be that as it may, we are complemented here with a panel here this morning. Mr. Silbergeld, we will just start and go right across.

STATEMENT OF MARK SILBERGELD, DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION

Mr. SILBERGELD. Thank you, Mr. Chairman. Let me say at the outset that it is a privilege before this committee, and I compliment the chairman of the committee for holding these hearings. I agree with the Senator from Nebraska, it is important to have these issues aired.

Consumers Union, after careful consideration of the factors of the agreement that affect consumers, has decided to support the implementation of the Uruguay Round. We do not do so as Polyanna. We recognize that the Round does not correct all of the problems or all of the issues that exist in the GATT, which is the world's rules for trading, and we recognize that it introduces some new problems for consumers. In my prepared statement, Mr. Chairman, there are indeed a number of issues which you will find outlined in footnote 2 on page 2 that indicate what we believe to be an appropriate future work program for continuing to improve the world's trading agreements. But at the same time, we believe that there are a number of reasons why this agreement provides a net benefit for consumers in the United States and around the world.

Nonetheless, we would not have supported it if we thought that this agreement threatened our national food safety provisions, and so we have examined those issues, the issues involving the so-called SPS, or sanitary and phytosanitary, standards measures agreements, and conclude that our measures are adequately protected under the rules that this new agreement on food safety standards sets up. I would like to focus on those, although a number of other issues are raised in my testimony, if I may, in my oral presentation.

The agreement very specifically provides that the United States can choose its own level of food safety protection. It is quite clear that despite the numerous references to international standards and the general agreement to move toward harmonizing, which is bringing closer together, the world's food safety standards using the international standards that are identified in the text as a basis for bringing those standards closer together, that quite specifically each country can choose its own standard of protection; that includes a zero standard of protection—zero risk standard of protection—if we choose. As you know, in the case of the Delaney clause of the Food and Drug Act regarding food additives, the United States so chose. That is protected by the agreement, and that was key to our decision to support this agreement.

We believe that the agreement sets an appropriate standard for justifying those national food safety standards that are higher than international food safety standards. That is that they either be based on science or that they be based on an examination of the international standard and the determination that that international standard is not sufficient to protect the higher national standard, to achieve the higher national level of protection. That, too, we find to be comforting and adequate, because U.S. food safety standards are in fact based on science. It has been suggested from time to time that, the Delaney clause itself is not based on science because it is a zero-risk standard. But, the zero-risk standard is permitted because it is our chosen national level of protection, and the decisions under the Delaney clause, that particular additives would violate the clause, are in fact based on science. The Food and Drug Administration is required under that law to determine that a particular proposed additive does cause cancer in humans or animals when ingested or by appropriate laboratory techniques. Those are scientific determinations. We believe, and the Food and Drug Administration has stated in many public forums that it believes, that it can quite successfully protect that standard and other standards on the scientific justification basis.

We are also convinced that the sanitary and phytosanitary agreement does not give GATT dispute settlement panels the power to second guess our underlying scientific basis. I note particularly that a footnote was added to the text in December of last year, just before the final agreement was signed, that very specifically protects our power to make our own determination as to what the underlying science is. The job of the panel is only to determine that we went through that process and that the scientific underlying basis underlying a standard is not a sham. After all, the purpose of this agreement is to keep countries, and countries have used phony standards to exclude U.S. food products from trade, to pre-

vent countries from adopting false food safety standards that are not really primarily intended to protect the public from health risks in the food supply, but rather intended to exclude food from trade.

The other issue that I think that plays into this is that the European Union maintains a so-called hit list of U.S. standards, and that under this, food safety standards as well as many other standards may be challenged. I will tell the committee that every country maintains—well, perhaps every country is too broad—many countries maintain lists, as we do, of other countries' measures and actions, behaviors, courses of conduct, including inspection, holding up goods at customs, holding up perishables at customs, and so forth, that could be labeled a hit list, and we do so as well. The USTR publishes one annually as required by section 301. The suggestion that members of the GATT will take these hit lists and turn them into a trade dispute war under the GATT dispute settlement provision is not one that I share. The GATT mechanism is not capable of handling large numbers of such complaints. Countries publish these in part as a basis for jawboning with their trading partners about removing barriers. Sometimes, I am told by people in the trade business, countries list particular measures because they are under pressure from their industries to do so. But having done that, it is not possible for any country to file large numbers of complaints before the GATT. It has not been the experience before the GATT that huge numbers of complaints have been filed; there are a few each year; and were they to do so, they would generate a dispute settlement war which would put their own standards at risk. And we have many complaints, as the USTR's annual review shows, about other countries standards. So, while these lists are useful in identifying differences about which countries can jawbone and sometimes perhaps posture, I do not believe that the publication of these lists, which is hardly new and hardly something that has come about because of the Uruguay Round agreement, poses the potential for some huge dispute settlement war before the GATT or the new WTO.

In conclusion, Mr. Chairman, I would simply say that on the whole, with the reservations we have noted which we believe are more appropriately addressed by the future WTO work program, and we are prepared to address the GATT and the WTO itself to bring pressure from consumers around the world to improve these situations, we believe that on the whole the Uruguay Round will be good for consumers despite its problems, and we would urge the committee, after due consideration, to recommend its implementation to the full Senate.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Silbergeld follows:]

PREPARED STATEMENT OF MARK SILBERGELD

Mr. Chairman, Consumers Union¹ appreciates the Committee's invitation to testify on the important issue of legislation to implement the Uruguay Round Agree-

¹Consumers Union is a nonprofit membership organization, chartered in 1936 under the laws of the State of New York to provide information, education and counsel about consumer goods and services and the management of family income. Consumers Union's income is derived solely from the sale of Consumer Reports and its other publications and from member donations. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer

ment of the General Agreement on Tariffs and Trade (GATT). We urge the Committee to recommend this legislation favorably to the Senate and we urge the Congress to pass this bill, which would approve the agreement and enact various measures necessary or related to implementation of the Agreement.

Let me state at the outset, Mr. Chairman, that our support for the Agreement, while definite and vigorous, in no way overlooks the fact that the GATT and its intended successor, the World Trade Organization (WTO) will continue to hold serious concerns for consumers. The Uruguay Round Agreement did not address all of the existing concerns about the current GATT, and it has introduced some new concerns that must be addressed. In addition, implementation of the Agreement needs to be undertaken judiciously and with due regard to consumer interests, in order for it to achieve its beneficial objectives.² We will join consumer organizations from around the globe in seeking to assure that progress continues to be made toward making the world's trading rules more consumer-friendly.

On the whole, however, it is our view that the Uruguay Round Agreement is good for consumers. Our conclusion is based on the following considerations:

1. On balance, the Agreement will increase consumers' access in the marketplace to a wide variety of goods and services, thus increasing competition with predictably beneficial effects on consumer prices and choice.

2. The Agreement will create increased economic activity and predictably provide a net gain in employment at home and around the world; historically, the GNP goes up as trade increases; virtually all projections predict this result from the Uruguay Round Agreement.

3. The International organization of Consumers Unions and many developing nation consumer organizations believe that, despite shortcomings, the Agreement will enhance most developing nations' economies, increase their employment opportunities and their national living standards.

4. Regarding a subject of very particular interest to U.S. consumers, the Agreement will permit the U.S. to maintain our existing and adopt new national food safety, environmental and other technical standards that may exceed internationally-recommended standards.

For these reasons, Mr. Chairman, Consumers Union concludes that the Uruguay Round Agreement would provide an important net benefit to consumers and urges its implementation.

I would like to focus the balance of my remarks on a matter that I know is of great interest to this Committee, the maintenance of higher than internationally-recommended standards, especially food standards.

Consumers Union has examined with care and concern the question whether the Agreement on the Application of Sanitary and Phytosanitary Standards³ (SPS), one of the major agreements contained in the Uruguay Round Agreement, permits the U.S. to maintain those among its food, plant and animal safety standards that are more strict than international recommendations and to adopt additional, stricter standards. Our conclusion is that the SPS adequately protects our rights in this regard.

The SPS Agreement reaffirms that "no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health * * *" Among its basic purposes are the improvement of human and animal health through sanitary measures and of the phytosanitary situation and the prevention

Reports, with approximately 4.9 million circulation, regularly carries articles on health, product safety, marketplace economics and regulatory actions which affect consumer welfare. Beginning with the first issue of Consumer Reports in 1936, Consumers Union has reported on hazards of lead exposure from various sources on numerous occasions. Consumers Union's publications carry no advertising and receive no commercial support.

²Especially important are the following: transparency and Non-Governmental Organization (NGO) input into the work of the new WTO, both in its dispute resolution process and in its work programs; broader recognition of environmental and labor concerns; greater equity for the least-developed nations in further reductions of tariffication, quotas and other trade barriers; effective implementation of the ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries; maintaining high national standards as WTO members engage in the process of national standards harmonization; an approach to implementation of the intellectual property provisions of the Agreement that reflects adequate concern for the prices paid by developing nations' consumers for pharmaceuticals, for preservation of plant varieties, for the rights of farmers to replant seeds harvested from proprietary varieties and to assure broad access to genetic materials; and establishment of a global competition policy.

³"Sanitary" refers to food-related measures to protect human and animal health and life. "Phytosanitary" refers to measures to protect plant health and life. Measures relating to food that are not related to these issues, such as weights, measures and labelling, are to be governed by the Agreement on Technical Barriers to Trade (TBT), rather than the SPS.

of use of such measures as disguised restrictions on international trade and the harmonization of national standards "on as wide a basis as possible."⁴ In order to achieve these ends, the SPS adopts a scheme that recognizes the right of GATT/WTO Members to maintain SPS measures necessary to protect human, animal or plant life, but declares that they should have a scientific justification for such measures so as to prevent these measures from being used to discriminate.⁵ The intended effect of the SPS Agreement is to separate national measures that protect life and health from those that serve primarily as hidden trade barriers.

U.S. sanitary and phytosanitary standards exceed international recommendations in many instances and thus, if challenged, we would have to meet these justification provisions. In many other cases, however, we do not exceed international recommendations, hence these provisions would not apply. However, in our view, the body of U.S. federal and state food safety measures upon which we rely to assure that we have a reasonably safe food supply is based on science and can meet the tests set out in the SPS Agreement, when those tests need to be applied.

Perhaps the most useful information I can provide to the Committee at this point is to address some of the crucial questions regarding the potential effect of the Agreement on U.S. standards, based on our reading of the text as it appears to apply to the underlying facts.

Relationship of International to National Standards. The first and foremost question that must be answered is whether the SPS Agreement will require the U.S. to abandon its food safety standards and to rely on international standards, some of which are weaker than our own. After reviewing the agreement and the relevant body of underlying facts, our conclusion is a clear "No".

First, it should not be overlooked that U.S. standards are not always stricter than international standards. For instance, in the area of standards for pesticide residues in foods, the U.S. has stricter standards than does the relevant international standards body for foodstuffs, the Codex Alimentarius Commission,⁶ governing allowable levels of residues for most carcinogenic pesticides, but on the whole the Codex has stricter standards for residues of pesticides that are neurotoxic, mutagenic or teratogenic. While the Agreement in no way requires U.S. adoption of Codex standards, it is important to note that in many cases such a change would result in a stricter, not a weaker, U.S. standard.

Second, particular passages of the text of the Agreement make clear that Member nations are not required to abandon stricter national standards for less-strict inter-

⁴ See The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts, GATT Secretariat, Geneva (1994), (hereinafter, "Legal Texts"), Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter SPS), pp. 69-84, chapeau at p. 69. ("Chapeau" refers to the declarations at the head of the Agreement, preceding the numbered Articles and Paragraphs.)

⁵ Article 3, paragraph 3 (SPS, p.71). A scientific justification exists under this provision if the Member nation "on the basis of an examination and evaluation of available scientific information * * * determines that the relevant international standards, guidelines or recommendations are not sufficient to achieve its appropriate level of protection." Id., n.2. This paragraph also recognizes a higher national measure as GATT-consistent if the Member nation determines on the basis of a risk assessment that the measure is appropriate to achieve its chosen level of sanitary or phytosanitary protection.

⁶ The Codex Alimentarius Commission is a sub-agency of the United Nations, jointly funded by the U.N.'s World Health Organization and its Food and Agriculture Organization. It is headquartered in Rome. Membership consists of those U.N. Members and Associate Members who choose to be considered as Members. At present it has about 120 nation members; the membership list is substantially similar to that of the GATT. Its organization and procedures are published in the volume Codex Alimentarius Commission: Procedural Manual, FAO/WHO, Rome, 1993. It has at present twenty-two working committees which process proposals to establish recommended food standards. Final promulgation is by the Commission, which consists of representatives designated by Member governments. The Codex-recommended standards are relied upon by much of the world as a basis for national food standards, included such developed nations as Australia. Basically, only the U.S., the U.K. and Japan have the scientific and budgetary capacity for completely independent development of national food standards. Codex standards have facilitated the existence of national standards, especially in developing nations, that can better offer consumers some basic assurances of food safety, known nutritional content and information labelling.

The transparency of Codex activities is in the midst of a long process of change. For some years, the International Organization of Consumers Unions has been an accredited nongovernmental organization (NGO) with the right to speak from the floor during committee meetings. Other organizations including U.S. organizations such as Public voice and Community Nutrition Institute have participated in some Codex processes. Codex recently opened its committee meetings to the press. The U.S. Codex delegation holds public meetings prior to Codex committee meetings to obtain public views on the positions it should take. While much work is to be done in making the process more balanced between consumer and producer interests, the direction of the change is toward transparency and greater public participation.

national standards.⁷ Concomitantly, nothing in the text declares that national standards must conform to international standards.

The GATT Process Does Not Second-Guess U.S. Scientific Decisions Underlining our National Food Standards. Two considerations must be addressed regarding the basis on which we set our food standards, including those that by entering into the SPS we would agree to justify by science because they are stricter than international standards.

First, it would be unacceptable if the U.S. could not choose risk-averse public health strategies in situations where we face a health or safety risks from the food supply but the scientific evidence is uncertain or substantially incomplete. The SPS Agreement addresses this concern and resolves it in favor of our right to be risk averse.⁸

Second, it would be of great concern if the GATT dispute settlement process contemplated the reevaluation of scientific determinations which are made by U.S. federal or state health agency authorities in setting national or state food standards. This concept of re-evaluation is sometimes referred to as "dueling science". The concern regarding dueling science theoretically would come into play if a U.S. standard that is stricter than an international standard were challenged as trade-discriminatory and the issue of scientific justification were presented to a dispute settlement panel which could then re-evaluate the science underlying the U.S. measure.⁹

However, the Agreement allows the U.S. readily to avoid placing national scientific evaluations into the realm of dueling science in the GATT context. The Member nation, rather than the GATT dispute settlement process, is authorized to determine that a scientific justification exists. All a GATT Member need do to avail itself of this right is to determine that an international standard will not achieve its appropriate [i.e., chosen] level of protection "on the basis of an examination and evaluation of the available scientific information in conformity with the relevant provisions of" the SPS agreement. In other words, it needs to give the relevant international standard due consideration, but it does not need to adopt it.

Zero-Risk Measures and the Role of Risk Assessment. It would be of great concern if the provisions of the SPS Agreement were to render the Delaney Clause of the Federal Foods, Drugs and Cosmetics Act¹⁰ inconsistent with the GATT and thus subject to a successful challenge. However, we conclude that the Agreement has no such effect. The Clause addresses no particular additive substance. Instead, it specifies as "zero" the level of protection that the U.S. deems appropriate with respect to food additives.

The SPS Agreement explicitly recognizes the right of Members to maintain higher than international standards to achieve their chosen level of protection.¹¹ In doing so, they agree to meet the risk assessment provisions of Article 5. The question arises whether a risk assessment can be done, hence whether Article 5 can be complied with, in the case of a zero-risk level of protection. The basis on which the Delaney Clause requires the government to determine whether a food additive is safe patently constitutes a science-based assessment of the risk of cancer; the FDA's process is precisely to evaluate whether an additive in question presents any risk

⁷The text refers to this issue in several passages. For instance, the SPS chapeau notes that promotion of the harmonization of national standards with international standards should be done "without requiring Members to change their appropriate level of protection of human, animal or plant life or health". (SPS, p. 69.) (An "appropriate level of * * * protection" is essentially the degree of risk deemed appropriate by a Member with respect to "human, animal and plant health or life within its territory". (SPS, p. 79).) Article 3, paragraph 1 notes the provision elsewhere in the text of exceptions to the general call for basing national standards on international standards, with "particular" reference to the following "paragraph 3". Paragraph 3 recognizes the right of Members to exceed international standards with national measures that have a "scientific justification" or in order to meet its own appropriate level of protection. (SPS, p. 70.) A presumption is established in Article 3, paragraph 2 (SPS p. 71) that a national standard conforming to the international standard or recommendation is consistent with the GATT, but national measures which otherwise conform to the SPS Agreement also are presumed to be consistent with the GATT (Article 2, paragraph 4, SPS p. 70).

⁸Article 5, Paragraph 7, explicitly allows for provisional measures on the basis of "available pertinent information" where "relevant scientific evidence is insufficient". A Member adopting such a measure agrees to seek to obtain the relevant information and to review the measure accordingly within a reasonable period of time. (SPS, p. 73.)

⁹See Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter Dispute Settlement Understanding), Articles 6-20, Legal Texts pp. 410-420.

¹⁰21 USC Section 348(c)(3)(A). The Clause provides, in part, "That no [food] additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal. * * *". The Clause is, by its terms, a zero-risk level of protection.

¹¹Article 3, paragraph 3, *supra*.

of cancer in humans or animals either from ordinary ingestion or appropriate testing.¹²

State Standards. Some states have standards, including food standards, that are more stringent than federal standards. California's Proposition 65, for instance, has been used to require safety warnings on drinking water and some foods, as well as many other products.¹³ It would be of substantial concern if the SPS Agreement were to limit the ability of states to adopt or maintain such standards. However, we find nothing in the Agreement that would have this effect.

The only reference in the SPS to Member nation's political subdivisions is in Article 13. But that provision merely obliges national governments actively to support compliance with the SPS by "other than central governments."¹⁴ In other words, states may maintain higher than international standards under the same conditions as may national governments, but national governments undertake an obligation to see that these conditions are met. Nothing in the SPS Agreement suggests that a state standard could be violate of its terms simply by reason of exceeding the requirements of a national standard. And indeed, it seems inconceivable that the Agreement contemplates the abandonment of independent sub-national standards by some obscure construction of the text.

The European Union [Formerly European Community] Has a "Hit List" of U.S. Standards That It Will Challenge Before the WTO. Many governments, under their domestic trade laws, regularly publish lists of foreign provisions that they or, practically speaking, some of their powerful industries deem to constitute unfair trade barriers to trade. The European Union maintains such a list of U.S. provisions,¹⁵ as does the United States with respect to perceived barriers maintained by its trading partners.¹⁶ The characterization of such documents as "hit lists" of measures intended for GATT/WTO challenge is speculative at best. The GATT/WTO dispute settlement system could not absorb the number of complaints that would be submitted for settlement if much of this list were translated into challenges at the Article 6 (panel establishment) stage. Further, any member filing substantial numbers of complaints would certainly be aware that it would be initiating a "dispute settlement war" and subjected to the filing against it of similarly large numbers of complaints, exposing its own measures to challenge.

Such a scenario overlooks several factors. First, some of the provisions listed by governments on all sides of such potential disputes may be valid. Second, many of them relate to delays in inspection and import approval rather than to the content of safety standards. Rather, what the listing of complaints primarily does is to lay the basis for "jawboning" toward informal, bilateral resolution—whether at a very informal stage or in the more formal, pre-panel context of Articles 4 and 5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. Indeed, some issues may stop with the listing itself, as governments may be under pressure from domestic industries simply to list disputes, and having done that they are in a position to assert to their industries that they cannot pursue all complaints formally and must have priorities.

More importantly, the filing of a complaint against a domestic standard or practice is in no way the equivalent of losing the case. It is only the beginning of the process. Both the existing GATT dispute settlement process and the somewhat different process contemplated under the WTO are much like our own domestic judicial process of having an open court house. The court house is there to provide a mechanism by which disputes can be settled without having to resort to fistcuffs. Anyone who can pay the filing fee can lodge a complaint, but not all cases are winners.

¹² See Report on U.S. Food Safety and the Uruguay Round: Protecting Consumers and Promoting U.S. Exports, U.S. Trade Representative in conjunction with the U.S. Food and Drug Administration, the U.S. Department of Agriculture and the U.S. Environmental Protection Agency, Washington, June 1994 (hereinafter, Report on Food Safety), pp. 4, 6.

¹³ Proposition 65 itself, like the Delaney Clause, is in itself only the statement of appropriate level of protection. It does not list specific substances as subject to its operation. The identification of those substances is a matter of administrative process. Hence, it is not the law itself, but specific administrative applications that could become subject to challenge if they neither conformed to international standards nor (in the case of a food safety warning) was justified by administrative reliance on science. See n. 10, *supra*.

¹⁴ * * * Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central governmental bodies. * * * The article also addresses private standards-setting organizations and regional bodies, as well as governmental reliance on nongovernmental bodies for implementation of SPS measures.

¹⁵ Report on United States Barriers to Trade and Investment 1994, Services of the European Commission, Brussels, April 1994 (hereinafter EC Report).

¹⁶ 1994 National Trade Estimate on Foreign Trade Barriers, U.S. Trade Representative, Washington, 1994.

Indeed, it is highly worthy of note that the 1994 EC Report lasts a complaint which was the subject of formal GATT settlement just recently decided. The Report states, "US car taxes discriminate against European imports."¹⁷ But the GATT dispute settlement panel that heard the EC complaint in this matter did not concur; the panel upheld three measures the U.S. considers very important to fuel conservation.¹⁸ Hence, the mere listing of "complaints" for possible dispute settlement constitutes no reason to abandon to Uruguay Round Agreement. Indeed, there is no reason to suspect that fewer challenges to U.S. standards will occur if the Uruguay Round Agreement does not take effect. Any of the standards listed in the EC Report could well be challenged under the existing GATT dispute settlement process, which would continue to exist if the Uruguay Round were not to take effect.

Discontinuing the Veto of Panel Decisions in WTO Dispute Settlement. Under current GATT process, a dispute settlement panel decision constitutes only a recommendation to the GATT Council. The council must vote affirmatively to adopt the settlement, and any Member can veto the proposal to adopt. In other words, the loser can declare itself the winner. The WTO Dispute Settlement Understanding would reverse the relative effect of panel (and the newly provided-for appellate panel) decisions: a dispute settlement panel decision (or the decision of a panel of the Standing Appellate Body, if the panel decision is appealed¹⁹) would become final unless an appellate report is reversed by a consensus of the Dispute Settlement Body.²⁰

This change has been criticized as threatening the sovereignty of the United States to maintain stronger than international standards. However, final WTO decisions are not self-executing and would have no legal effect upon any U.S. (or other) law, regulation or practice that is successfully challenged. Our laws could be changed only through the constitutional process, our regulations could be changed only through established legal processes. Nowhere in the Uruguay Round Agreement do Members agree that WTO final decisions should be self-executing.²¹ Nor would we recommend such a provision. However, the automatic finality of panel decisions within the WTO is a highly defensible provision. It would end the practice whereby a losing party can veto a decision against it, thus obviating the need to decide whether or not, and how, to comply with its international obligations. It seems reasonable to require that Members agree at least to face compliance decisions when they are found to have violated an international obligation.

Mr. Chairman, there are many other questions we might address in this context, but I believe that my discussion above highlights those issues that may be most thorny and most troubling to some.

In closing, I would reiterate Consumers Union's strong support for Congressional approval of the Uruguay Round Agreement as a crucial first step in what must be a continuing effort to make the world's trading rules more consumer-friendly and fair.

The CHAIRMAN. Thank you very much, Mr. Silbergeld.

Incidentally, your full statement in its entirety will be included in the record, and also your highlight as delivered, and that goes for all the other witnesses. You can deliver it as you wish, or highlight it. Mr. Blackwelder.

STATEMENT OF BRENT BLACKWELDER, FRIENDS OF THE EARTH

Mr. BLACKWELDER. I am Brent Blackwelder, president of Friends of the Earth. We are a national conservation organization. We are part of Friends of the Earth International, an environmental organization with member groups in 52 countries.

¹⁷ EC Report, p. 50.

¹⁸ United States—Taxes on Automobiles, GATT, Geneva, September 29, 1994. The panel did find that one aspect of the CAFE standards system could not be justified under any provision of the GATT's General Agreement, as it treats domestic and imported differently to the unfair advantage of domestic products. However, the CAFE system in general was justified under provisions of the GATT and both the gas guzzler tax and the luxury tax were found to be non-violative.

¹⁹ See Dispute Settlement Understanding, Article 17.

²⁰ See Dispute Settlement Understanding, Article 16, paragraph 4, and Article 17, paragraph 14.

²¹ See Report on Food Safety, p. 14.

At the outset, Mr. Chairman, we want to salute you for your courageous action in convening these hearings and forcing serious consideration of this agreement rather than having it rushed through at the end. On every index of responsibility, social, environmental, economic, procedural, and moral, we think you did the right thing, and we commend you for that.

Friends of the Earth looks upon trade agreements as agreements which ought to foster sustainability. We ought to be looking upon trade agreements in the larger context of whether they are promoting sustainable societies, sustainable agriculture, indeed, a sustainable planet. By every reckoning, we believe that this proposed Uruguay Round of GATT is 180 degrees opposite from the purposes of sustainable development.

In my statement, I outline major environmental objections to the proposed round, but this should be considered in the context that this agreement is not doing what a trade agreement could do. It is not making progress, it is setting us backward, we believe. Some of the specific comments we have are to the effect that GATT could impact U.S. environmental laws. It could impact the environmental laws of other countries all around the world. I outline seven particular areas of concern here.

Laws on toxic and hazardous waste: Already we have seen the U.S.-Canadian trade agreement result in some challenges to the EPA's asbestos phaseout.

Recycling and waste reduction: Will bans on nonrecyclable materials be vulnerable to challenge?

Pesticides and food safety: We are seriously concerned that GATT would threaten legislation that deals with the circle of poison. The big problem is, we have a lot of pesticides which we ban here but which we still export. Some of these pesticides which we export are sprayed and then return on the food products coming back into the United States.

Would labeling laws which inform consumers about whether a product has been irradiated or contains carcinogens or has been grown organically be threatened?

Of particular concern also are laws which this committee has passed or has responsibility, because if GATT directs you to revise or change laws, some of these will come right back to this committee. One has only to look at the Marine Mammal Protection Act. There have been two challenges. We have lost both of those in Geneva.

The natural resource and wilderness protection laws are also of concern to environmental organizations. Free trade agreements are justified on the basis of leading export-oriented growth. This can involve rapid depletion of resources around the world. This is why Friends of the Earth is particularly concerned.

The International Monetary Fund's recipe tells countries to rapidly increase their exports. The only way to do that often is to cut down your forests. It is a very shortsighted policy. It does not demonstrate any long-term stewardship which is required. Attempts by countries even to get a handle on these could run into GATT objections. For example, bans on exports of raw logs and other such matters could be challenged.

If we take a look, for example, at the tuna-dolphin case, it brings up a fundamental issue about whether the United States can discriminate against products based upon how they are made or how they are harvested.

If you take a look, for example, at these two pens which I have here in front of me, they look identical, and they are. A chemical analysis would show that they are precisely the same.

But one of these pens might have been made by child labor, children under the age of 10 sweating it out into the wee hours of the night. It may be made by workers suffering intolerable working conditions. It may be made using ozone-depleting chemicals which do not show up in the final product, but were used in the process. It may be made by factories which are causing tremendous harm to local fisheries and forests.

We cannot discriminate, according to the rules of GATT, on these two products, even though they are made entirely in a different manner, but yet they look identical. This is a serious concern and one of the major problems we have with this proposed treaty.

A trade treaty which is truly sustainable should be elevating worker safety standards, should be elevating environmental standards, should be encouraging innovation and pioneering. This is not. This trade agreement is throwing a wet blanket on such efforts.

We are concerned, in fact, that GATT with its philosophy and policy is actually going to spread pollution havens around the world. All the time at Friends of the Earth we receive complaints about the unscrupulous behavior of transnational corporations. People in developing countries are not well-equipped to deal with the power of these companies, and they ask us to help.

We see GATT not as bringing them under control and discipline, but as giving them even greater freedom to go wherever they want to do whatever they want to do, to go where laws are not enforced, where standards are not protected.

Let me turn next to the World Trade Organization. Friends of the Earth and its member groups in 52 countries strongly support democracy and the spread of democratic institutions. We are totally shocked at the prospect of creating a new, international institution which is fundamentally antidemocratic and closed to participation of the peoples of the world.

We think this operation of the World Trade Organization should be of special concern to this particular committee because, unlike the current GATT, in which we can essentially walk away from rulings which we do not like, under the new rules, the United States has really two choices if a ruling goes against us. One is that there can be sanctions imposed, and these sanctions can be cross-sectoral.

In the case of, for example, a ruling against us on fishing, sanctions could be imposed on the telecommunications industry. We would then have a very serious situation in which the telecommunications industry would be set up as lobbyists against a fishing law, or a law governing natural resources, or a law governing energy conservation.

Furthermore, we think that the Office of the U.S. Trade Representative has not spelled out clearly to the Congress the fact that

these sanctions are only supposed to be temporary. We are really supposed to go ahead and change the law.

It is true that the WTO cannot come in to the United States and enact a law. That is true. But when we sign on to this agreement, we sign on to rules saying that we are going to abide by them, and I quote in my testimony the appropriate sections of the agreement which show that we are indeed not supposed to accept sanctions in perpetuity, but we are supposed to actually alter our laws if we have a ruling against us, and we are losers in two out of three decisions so far in Geneva.

Finally, I close my testimony by saying we think that there are some much broader considerations of how GATT will affect the world's economy. If, in fact, northern industrial countries and their manufacturers will see that they can make a large profit by moving offshore, and they can indeed do that, because 25 to 30 percent of their costs are tied up into labor and benefits, and you can hire 30 to 50 people in Asia for the price of 1 European or 1 American, if they swell the ranks of the unemployed in North America, then we will have a situation of community destabilization.

You cannot have social and environmental progress if unemployment ranks are growing, and this will be the situation the North faces. At the very same time, GATT's recipe for agriculture, and a very serious one, is maximum production with minimum labor. This means that roughly two-thirds of the 3 billion rural residents of the Southern Hemisphere are superfluous, if GATT's formula truly succeeds. Thus, what are you going to do if you find over the next several decades not just thousands, not just millions, but tens of millions of people having no place to work? They cannot go into burgeoning Third World cities already overcrowded and unmanageable today.

This is not an agreement that is promoting worldwide stability. We think it is an agreement which is undermining worldwide stability. It is undermining healthy communities, undermining healthy nations. It is not where we should go.

We are glad that the committee is looking into this, and I will be glad to respond further and elaborate on this viewpoint.

[The prepared statement of Mr. Blackwelder follows:]

PREPARED STATEMENT OF DR. BRENT BLACKWELDER

Friends of the Earth appreciates the opportunity to testify on the proposed GATT agreement, a subject of vital importance to the United States and the world. At the outset we wish to salute the Chairman of this Committee for his courageous decision to insist on thorough examination of this agreement prior to Congressional action. GATT is too critical a decision for the world's economy and the health of the planet to be rushed through at the close of Congress. On every index of responsibility—social, economic, environmental, procedural, and moral—you did the right thing, Mr. Chairman.

OPPOSITION OF ENVIRONMENTAL ORGANIZATIONS TO GATT

At the outset Friends of the Earth wants to point out for the record that we know of no national environmental organization which is in support of GATT. Attached to this testimony is a representative set of quotes from major environmental organizations about their objections to GATT.

Friends of the Earth is part of Friends of the Earth International which has member groups in 52 countries. FoE international is opposed to the Uruguay Round of GATT and has produced a list of essential elements which ought to be part of any trade agreement but which are absent from this proposed GATT. Trade agreements

should help build sustainable societies, sustainable agriculture, and a sustainable planet. Unfortunately, in its orientation and provisions the Uruguay Round of GATT is 180 degrees opposite to sustainable development.

ENVIRONMENTAL CRITICISMS OF THE PROPOSED NEW GATT

In this testimony Friends of the Earth wishes to outline the basic environmental arguments against the Uruguay Round of GATT. The first set of criticisms concerns GATT's impact on the right of any nation to set environmental standards higher than International standards. The GATT essentially addresses the environment by omission and leaves the strong likelihood that it will foster more pollution havens throughout the world. Pioneering and Innovation in the health and environmental area will be dampened under the ever-present threat of GATT's ruling such laws as trade barriers. There are grave concerns about the proposed World Trade Organization (WTO) with its closed door operations and no opportunity for scrutiny and input. The new GATT would prevent countries from rejecting products based on how they were made; i.e., with child labor or ozone depleting chemical processes. We will discuss these points in detail.

GATT'S IMPACT ON US LAWS

There is serious concern that GATT will act like a wet blanket on innovation in the environment and health area. The Final Agreement of GATT sets forth language and criteria that will allow our trading partners to file complaints against US environmental laws. This is not an idle worry because the European Union has already filed complaints against our Marine Mammal Protection Act, the Gas Guzzler law and our auto fuel economy standards (CAFE). We have lost twice on the Marine Mammal Protection Act and have partially prevailed in the case of the automobile laws. Attached to this testimony is a fact sheet about the rulings in each of these cases.

There are seven areas of particular concern where environmental laws may conflict with the free trade policies embraced in GATT.

1) **Toxics and Hazardous Waste:** US laws that regulate toxic substances can be challenged as a barrier to trade. Under the US-Canada Agreement, for example, Canada has already challenged the Environmental Protection Agency's phase-out of asbestos. Attempts to restrict the import or export of hazardous waste could be construed as impeding trade.

2) **Recycling and Waste Reduction:** Bans on non-recyclable materials or excess packaging could be vulnerable to challenge. Laws that require the recycling of a product or regulate the type of packaging could also be challenged.

3) **Pesticides and Food Safety:** Both NAFTA and GATT set out to harmonize pesticide and food safety standards to meet international standards, which are often less stringent than those in the US. GATT might also threaten proposed "circle of poison" trade restrictions which would prohibit the export of pesticides banned in the US and ban the import of products with residues banned pesticides. Labeling laws which inform consumers whether a product has been irradiated, grown organically, or contains carcinogens may also be threatened.

4) **Air and Water Pollution:** Programs that encourage pollution reduction and provide incentives for industry may be challenged as unfair government subsidies. For example, under the US-Canada Free Trade Agreement, US industries argued that the Canadian government's incentives for scrubbers on smoke stacks to control acid rain were an unfair subsidy.

5) **Natural Resource and Wilderness Protection:** Free trade agreements are justified on the basis of promoting export-led growth, which can involve rapid depletion of natural resources. Developing countries which face severe debt pressures are told by the IMF to export more and more of their raw materials to increase their revenues and service the debt. Attempts to protect natural resources by regulating trade, such as through a ban on the export of raw logs, run contrary to free trade principles which forbid restrictions on exports and imports. Expansion of trade in such natural resources as timber can pose a threat not only to the sustainability of the forests themselves but also to a wide variety of plants and wildlife in these forests.

6) **Energy Conservation:** A wide range of US laws on energy efficiency might be challenged, and some have already been, as trade barriers. For example, government programs that encourage energy conservation and efficiency could be challenged as unfair subsidies.

7) **International Treaties:** Global environmental agreements such as the Montreal Protocol, which is designed to protect the Earth's ozone layer and which uses trade measures, could come in conflict with GATT.

8) Wildlife Protection: Our Marine Mammal Protection Act has already been challenged as a trade barrier under existing GATT rules, first by Mexico and then by the Netherlands and the European Union. The complaints were that our law discriminated against their exports of tuna to the United States. The dispute resolution panel of GATT has ruled against the United States in both of the tuna-dolphin cases. No input from citizens or environmental groups was allowed.

The Marine Mammal Protection Act was passed in 1972 to combat purse-seine fishing techniques in the Eastern Tropical Pacific Ocean because tuna fishermen were using pods of dolphins to locate tuna and were incidentally killing about 400,000 annually as they caught tuna. The Act has been quite successful, limiting the number of dolphins killed incidentally to about 27,500 per year.

PROCESS STANDARDS

The tuna-dolphin case brings up the fundamental concern that GATT's principles will prevent a country from discriminating against products on the basis of how they are produced or harvested. Thus, even if tuna is caught with massive kills of dolphins, there is no basis for keeping the tuna out of the US.

To take the situation more generally, consider two products, say two radios, which were identical except for the fact that one was made with child labor and involved the use of ozone-depleting chemicals and the other did not. Under GATT a country could not exclude the product made with child labor. Friends of the Earth believes that the United States has a strong moral obligation not to accept products made with child labor or produced under conditions which seriously harm workers. The United States should be able to limit goods produced by environmentally destructive methods.

GATT elevates to a supreme position the criterion of least trade restrictiveness. There ought to be serious debate about allowing such a trade principle to override all social, environmental, and ethical concerns. In the recent ruling on the challenge to CAFE standards and the Gas Guzzler Tax, the GAU panel allowed an exception to GATT rules because the laws were related to the "conservation of exhaustible resources"; however, the panel confirmed that the least trade restrictiveness principle applies for laws relating to the protection of health and the conservation of plants and animals. Thus, the idea of "trade above all else" still dominates the thinking at GATT.

POLLUTION HAVENS

Friends of the Earth is concerned that GATT will foster the growth of pollution havens around the world. During the debate on NAFTA, we pointed out that in the border free trade zone, businesses had been able to increase their profits 100 percent by avoiding compliance with pollution laws. We fear that this trend will expand worldwide under GATT. Many instances of irresponsible behavior on the part of transnational corporations are regularly brought to our attention at Friends of the Earth. The failure of the proposed GATT to come to grips with this issue is inexcusable.

WORLD TRADE ORGANIZATION (WTO)

Friends of the Earth and its member groups in 52 countries strongly support democracy and the spread of democratic institutions. We are totally shocked at the prospect of creating a new international institution which is fundamentally anti-democratic and closed to the participation of the peoples of the world. Under the rules of this new institution, secret panels will be given the power to determine the legitimacy of the health, safety, and environmental laws of countries throughout the world. The people of the countries whose laws are challenged won't even have the right to appear before the WTO or even to submit information to the WTO. The United States would have one vote along with every country of the world, no matter how small. If one of our state laws in the United States were challenged, there is no guarantee that the people of that state would have any rights before the WTO.

The operation of the WTO should be of special concern to this Committee because many of the laws being challenged or about to be challenged have been crafted by the Committee. Unlike the current arrangement under GATT in which the United States can essentially walk away from any ruling it does not like, the new rules provide for cross-sectoral sanctions should the United States not make the change called for by the GATT dispute resolution panel. Thus, sanctions could be imposed on the telecommunications industry for failure to comply with a GATT ruling on fisheries or automobiles.

Furthermore, the Office of the US Trade Representative has not spelled out the truly Draconian nature of this arrangement to the Congress. Rather the Trade Rep-

representative has tried to portray this as not a serious problem, saying that we don't have to change our laws if we don't want to. While it is true that the WTO cannot come into the United States and enact a law, cross-sectoral sanctions could be very powerful leverage to force any country to change its laws. Furthermore, the new agreement clearly shows that sanctions are only supposed to be a temporary measure until a country changes its law. Here is the text:

Under Section 21.1 "prompt compliance with the recommendations or rulings of the Dispute Settlement Body is essential in order to ensure effective resolution of disputes * * *" and under Section 3.7 "the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures * * * found to be inconsistent (with the GATT). The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement."

These provisions make it clear that compensation is only a temporary measure and cannot be considered an alternative to withdrawal of the law in violation of GATT. The requirements are repeated in Section 22.1 which makes clear that "compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time."

OTHER ARGUMENTS AGAINST GATT

The preceding arguments constitute the basic set of concerns about GATT and indicate why Friends of the Earth strongly opposes this trade agreement. To close this testimony we wish to sketch another set of very compelling arguments against this GATT.

If GATT greatly increases unemployment in the North, it will undermine both community stability and environmental progress. Cogent arguments have been presented to this Committee to the effect that GATT will force more and more companies to move their production overseas, and thereby swell the ranks of the unemployed. High tech and service industries cannot compensate for this loss of jobs. With high rates of unemployment, communities become destabilized and progress on key social and environmental issues becomes more difficult.

At the same time unemployment is increasing in Northern industrial countries, the GATT agricultural policy—maximum production with minimum labor—will be driving rural residents in developing countries off their land. Two-thirds of the three billion rural residents of these developing countries will be rendered superfluous if the GATT formula succeeds. Where will these people go when burgeoning cities are already awash with people and no jobs? GATT is an agreement totally out of touch with current reality in the developing world and it will create instability and polarization of the peoples of the world.

Friends of the Earth concurs with such arguments and is especially concerned that GATT will actually widen the gap between rich and poor both within and between countries. By failing to pay attention to the interconnectedness of social, economic, and environmental factors, GATT is leading the nations of the world badly astray.

We urge the Congress not to hand over the most basic decisions about our economy and the international economy to a bunch of trade bureaucrats in Geneva who are divorced from the realities of the world and have a limited knowledge of social and environmental issues which form the overall context in which a global economy must operate.

The CHAIRMAN. Thank you. Mr. Brinza.

STATEMENT OF DANIEL BRINZA, SENIOR ADVISOR AND SPECIAL COUNSEL FOR NATURAL RESOURCES, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Mr. BRINZA. Thank you, Mr. Chairman. Good morning, Mr. Chairman and members of the committee.

As the chairman indicated earlier, my name is Dan Brinza. I am the Senior Advisor and Special Counsel for Natural Resources with the U.S. Trade Representative's Office.

Ambassador Kantor has appeared before this committee and addressed several of the issues that have been raised previously. I am here today to focus on standards issues and standards-related is-

sues concerning the Uruguay Round, in particular the agreement on technical barriers to trade, or the TBT agreement, and the implementing legislation that has been submitted to the Congress.

Despite the round's importance to future U.S. economic growth, some have expressed concern that the Uruguay Round TBT agreement will interfere with the ability of the United States to adopt and maintain strong health, safety, and environmental product standards. This concern appears to be based on a number of fundamental misunderstandings of the TBT agreement. Accordingly, it may be useful to review that agreement and discuss what its provisions mean with respect to the United States, including the State governments.

For the past 15 years, the United States has operated under commitments similar to those contained in the Uruguay Round TBT agreement. That is because the Uruguay Round TBT agreement replaces the existing standards code which was negotiated under the Tokyo Round of multilateral trade negotiations under the GATT.

This standards code has been in force with respect to the United States since 1980, and has been implemented as a result of the Trade Agreements Act of 1979. The new TBT agreement improves the rules regarding standards and technical regulations. Like its predecessor, the new agreement provides that standards, technical regulations, and conformity assessment procedures are not to be discriminatory or otherwise used by governments to create unnecessary obstacles to trade.

The reason that we negotiated the standards code in 1979, and the reason for this follow-on new TBT agreement in the Uruguay Round, is that we have seen over time that as we have succeeded in reducing tariff barriers to our exports to other countries, they are often replaced by nontariff barriers under the guise of product standards, and this agreement is intended to weed out those product standards that are designed to be unnecessary or disguised obstacles to trade from those that are legitimate product standards.

The agreement also promotes the transparency of WTO members' standards-related activities. This will help in the weeding-out process I described. It includes a process for the exchange of information, including the ability to comment on proposed standards-related measures made by other WTO members, and a central point-of-contact for routine requests for information on existing requirements. Furthermore, unlike the existing standards code, every member of the new WTO will be required to implement the new TBT agreement.

Most environmental and health-based product standards for industrial and consumer goods will be covered by the TBT agreement. The agreement recognizes that countries may set standards for products in order to protect human life or health, safety, or the environment, or consumers. The U.S. regulations prescribing safety standards for infant clothing or banning the presence of PCB's in consumer products are the types of product-oriented measures covered by the TBT agreement. However, the agreement makes clear that the level of protection the Government seeks to achieve through standards of this kind is not subject to challenge.

The new agreement ensures that each country has the right to establish and maintain standards and technical regulations at its chosen level of protection for human, animal, plant life and health and of the environment, and for prevention against deceptive practices. The agreement generally requires the use by governments of international standards when these are effective and appropriate.

At the same time, it provides that the general obligation to use international standards will not result in downward harmonization. In general, our clean air and clean water laws and regulations are directed at controlling pollution generated in industrial operations. Not only do these laws not raise trade-related questions, they are generally not even covered by the new TBT agreement, since they do not set product standards.

Where those laws do set product standards, as for automobile emission controls, they will be treated like the other product standards described above.

With respect to State laws, I would note the Uruguay Round agreements were drafted with our State laws clearly in mind. The rules established, such as nondiscriminatory treatment for foreign products, are generally the rules that our States already live by. In addition, the implementing bill makes clear that foreign governments and private parties cannot seek to enforce the Uruguay Round agreements in U.S. courts.

A number of State attorneys general raised questions early on about how the new agreements might affect State laws. After working out a series of provisions in the implementing package with congressional committees and with the administration, the leadership of the National Association of State Attorneys General expressed satisfaction over the way State concerns have been addressed.

I would also mention, on the question of environmental standards, that the GATT panel report that was recently released with respect to the challenge to three U.S. automobile laws, the luxury tax, the gas-guzzler tax, and the corporate average fuel economy requirements, demonstrates that WTO panels will not interpret the obligations under the Uruguay Round in a way that undermines our ability to safeguard our environment.

That panel explicitly upheld the sovereign power of governments to regulate their markets and their environments. The panel report confirms the broad discretion of governments to distinguish among products in order to achieve legitimate domestic policy objectives such as progressive taxation, fuel conservation, clean air and water, and responsible energy use. As a result, the administration believes implementation of the Uruguay Round this year is crucial for the economic future of the United States.

Thank you very much.

[The prepared statement of Mr. Brinza follows:]

PREPARED STATEMENT OF DANIEL BRINZA

Mr. Chairman, thank you very much. I appreciate the opportunity to be here today to discuss with you standards-related aspects of the Uruguay Round agreements, in particular the Agreement on Technical Barriers to Trade (TBT), and the implementing legislation that has been submitted to Congress.

Despite the Round's importance to future U.S. economic growth, some have expressed concern that the Uruguay Round TBT Agreement will interfere with the

ability of the United States to adopt and maintain strong health, safety and environmental product standards. This concern appears to be based on a number of fundamental misunderstandings of the TBT Agreement. Accordingly, it may be useful to review that Agreement and discuss what its provisions mean with respect to the United States, including state governments.

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

The Agreement on Technical Barriers to Trade (TBT) improves the rules regarding standards and technical regulations. In particular, the agreement provides that standards, technical regulations and conformity assessment procedures (e.g., testing, inspection, certification, quality system registration, and other procedures used to determine conformance to a technical regulation or standard) are not discriminatory or otherwise used by governments to create unnecessary obstacles to trade.

The Agreement promotes the transparency of WTO members' standards-related activities. It includes a process for the exchange of information, including the ability to comment on proposed standards-related measures made by other WTO Members and a central point of contact for routine requests for information on existing requirements. Furthermore, unlike the existing Standards Code, every member of the new WTO will be required to implement the new TBT Agreement.

The new TBT Agreement ensures that each country has the right to establish and maintain standards and technical regulations at its chosen level of protection for human, animal and plant life and health and of the environment, and for prevention against deceptive practices. The Agreement generally requires the use by governments of international standards, when these are effective and appropriate. At the same time it provides that the general obligation to use international standards will not result in downward harmonization.

State Laws Are Fully Protected

The Uruguay Round Agreements were drafted with our State laws clearly in mind. The rules established—such as nondiscriminatory treatment for foreign products—are generally rules our States already live by.

In addition, the implementing bill makes clear that foreign governments and private parties cannot seek to enforce the Uruguay Round Agreements in U.S. courts.

A number of State Attorneys General raised questions early on about how the new agreements might affect State laws. After working out a series of provisions in the implementing package with Congressional Committees and the Administration, the leadership of the National Association of State Attorneys General expressed satisfaction over the way State concerns have been addressed.

Most environmental and health-based product standards for industrial and consumer goods will be covered by the TBT Agreement. The new TBT Agreement carries forward, with some clarifying and strengthening modifications, the provisions of the existing GATT TBT Code, which entered into force for the United States in 1980.

The TBT Agreement recognizes that countries may set standards for products in order to protect human life, health, or safety or the environment. U.S. regulations prescribing safety standards for infant clothing, or banning the presence of PCBs in consumer products, are the types of product-oriented measures covered by the TBT agreement. The Agreement makes clear that the level of protection the government seeks to achieve through standards of this kind is not subject to challenge.

In general, our clean air and clean water laws and regulations are directed at controlling pollution generated in industrial operations. Not only do these laws generally not raise trade-related questions, they are generally not even covered by the new TBT Agreement since they do not set product standards. Where those laws do set product standards, as for automobile emission controls, they will be treated like the other product standards described above.

On the question of environmental standards, let me point out that the GATT panel report released recently demonstrates that WTO panels will not interpret the GATT in a way that undermines our ability to safeguard our environment. The panel report on three U.S. automobile laws (the luxury tax, gas guzzler tax, and Corporate Average Fuel Economy (CAFE) requirements) explicitly upheld the sovereign power of governments to regulate their markets and their environments. The panel report confirms the broad discretion of governments to distinguish among products in order to achieve legitimate domestic policy objectives, such as progressive taxation, fuel conservation, clean air and water, and responsible energy use.

The Administration believes that implementation of the Uruguay Round this year is crucial for the economic future of the United States. Thank you very much.

The CHAIRMAN. Thank you very much. Ms. Wallach.

STATEMENT OF LORI WALLACH, STAFF ATTORNEY, PUBLIC CITIZEN

Ms. WALLACH. Mr. Chairman, Public Citizens joins in thanking you for holding these hearings. Having public hearings on GATT is very important because today's trade agreements are no longer just about tariffs or quotas. They are now about very personal matters like the safety of our food and products and our environmental health. The implications of Congress' decision on this agreement will be much more far-reaching than on past trade agreements. The Uruguay Round proposal would put in place an expansive set of international rules that would establish the goals allowable for our country's domestic policymaking, and the means allowable to accomplish even GATT-legal policy goals. As well, the Uruguay Round would fundamentally transform what has been the 45-year GATT contract, a business contract between nations, into a new international organization, the World Trade Organization, which would have much greater power than the existing GATT to enforce its the extensive substantive new international rules it would put in place.

These rules would effectively preset parameters for all countries' policymaking. By OKing this agreement, every country would agree that it would only make domestic laws within the parameters defined by the substantive rules of the World Trade Organization. Any laws that exists, or in the future any law that goes beyond what is allowed by the World Trade Organization, it can be challenged before trade tribunals comprised of three trade experts meeting in secret in Geneva who would have the right to review the U.S. law. And if our law does not meet all of the WTO's substantive requirements, then that U.S. law would have to be altered or eliminated, or the United States would face perpetual trade sanctions.

Establishing such a system has massive implications in itself. However, to make matters worse, our analysis of the substantive rules shows that the rules are stacked against a country putting other policy values ahead of trade. We call it "Trade Über Alles" philosophy. Consumer safety or health, environmental protection, human rights and labor rights are all to be subjugated to maximizing trade and this order is to be enforced by strong dispute resolution. In sum, this is why Public Citizen opposes this agreement, and in fact is joined in doing so by a unanimous consensus of the U.S. environmental movement. The U.S. environmental groups were split in their positions on NAFTA. However, GATT's provisions are so much more clearly a threat to the environment and health and safety that they are united against GATT. All the pro-NAFTA environmental groups are against the GATT, and as well as nearly every citizens' group in the United States, and as well by hundreds of international consumer and environmental groups. In fact, there is only one U.S. citizens group standing out alone in favor of this deal—and that exception of our present company is noted.

Meanwhile, I would ask that this letter, with 300 international environmental and consumer and other citizens' groups asking that the WTO and its standards be rejected, be entered into the record to show the international movement against this agreement that

would so undermine years of citizen progress around the world to protect their food, make the environment safe and clean.

[The information referred to follows:]

NGO STATEMENT ON THE PROPOSED MTO OF THE URUGUAY ROUND NEGOTIATIONS
OF THE GATT

In recent weeks there have been intensified efforts by industrial countries to reduce their differences and conclude the Uruguay Round (UR) under GATT. As representatives of NGO: from both South and North countries, we are concerned that the substantive issues of the UR have not been adequately explained to the public.

In particular we are very concerned about the proposal in the UR to establish a new body named the MTO (Multilateral Trade Organisation.) It would have massive powers that would overcome other multilateral, regional and national rules.

Whilst there are good reasons for a multilateral rules-based trade and economic regime, neither the GATT nor the MTO should be the seat of such a body. The MTO would not be open or transparent nor accountable to those who would live under its rules. It would not give an equal voice to developing countries and its narrow commercial approach would render it unable to take account of development needs or environmental concerns.

We appeal to all governments involved in the UR negotiations to review this proposal of the MTO. The creation of the MTO or any implementation body was not part of the Punta del Este declaration of the UR and has to be removed from any UR agreement.

The reasons for concern are as follows:

1. The MTO proposal has very serious consequences that would affect the social, economic and cultural policies, and the environment and life of all countries. These consequences have not been adequately publicised, discussed or debated by the public in our countries.

2. The MTO would be based on GATT and greatly expand its powers to deal not only with trade in goods but also with investments, services and intellectual property rights. The MTO would thus become the most powerful economic body in the world with powers that override national policies and possibly other international agreements.

3. The MTO would become a powerful new instrument to impose policies on weaker countries. The MTO for the first time would introduce and legitimise an international system of "cross-sectoral retaliation" to enforce regimes or rules that compulsorily liberalise trade and investments in goods and services and that force all countries to have intellectual property laws that hamper technology transfer. Countries that do not follow these rules could have high duties or bans imposed on their goods. Developing countries would be forced to adopt national economic and social policies that weaken their domestic economic sectors and restrict their local technological development, under the excuse that total liberalisation would benefit developing countries.

4. The binding enforcement powers of the MTO would damage environmental, safety and consumer interests; its emphasis on trade liberalisation is not balanced by national and international commitments to respect sustainable development. For example:

- a. Nations would lose control over their natural resources, e.g. inequitable liberalisation of agricultural trade would preclude sustainable agricultural systems and damage fragile environments around the world;

- b. In some cases, nations would be obliged to harmonise environmental and social standards downwards, e.g. the proposals under the Technical Barriers to Trade would prevent the application of adequate environmental standards at the nation level;

- c. The patenting of life-forms through Trade-Related Intellectual Property Rights (TRIPS) would harm the environment;

- d. The liberalising of investment flows through Trade-Related Investment Measures (TRIMs) would severely reduce governments capacity to impose conditions on foreign companies.

5. Being based at GATT with GATT-style rules, the MTO would be outside the UN system and would deplete the influence of the UN over economic affairs. The MTO would thus contribute to a loss of international-level democracy, and render global economic decision-making even less transparent and accountable.

6. The MTO would reduce multilateral or national controls over big companies, and counter present efforts in other fora to regulate the restrictive business practices of transnational corporations (TNCs.) Thus big corporations would increase

their monopoly of markets without responsibility to meet national or international obligations, at the expense of small producers, consumers and the environment.

We do not believe that the MTO would be the answer to the need for multilateral trading rules, as it would increase tensions between strong and weak nations and even among strong nations themselves. It would disrupt the livelihoods of communities, small farmers, small firms, and traders. It would be at the expense of consumers and the environment.

We therefore propose the following:

1. The establishment of the MTO should be excluded from all proposals being negotiated in the Uruguay Round.

2. The issue of the MTO should be publicised and openly discussed by parliaments, interest groups and the public in every country.

3. Instead of a GATT-based MTO, we propose the setting up of an international trade body to be set up under the jurisdiction of the United Nations General Assembly (UNGA)—taking into account that the UN system must also be accountable to the principles of equity, transparency, and democracy.

The negotiations to create any international trade regime and its subsequent deliberations must be conducted in an open and democratic manner, bearing in mind that trade is not an end in itself and should be simply a means to the goal of sustainable development. Any trade body must therefore respect countries' obligations under other UN agreements, and defer to the authority of other UN institutions with social, economic and environmental results. Any trade body must be subjected to a full review by the UNGA after 5 years, upon which its continued functioning would depend.

HAMBURG, GERMANY,
17 November 1992.

LIST OF SIGNATURES (ORGANIZATION FOR IDENTIFICATION PURPOSES ONLY)

Charles Abugre, Third World Network, Ghana
 Qazi Faruque Ahmed, Proshika, Dhaka, Bangladesh
 Kristin Andersen, Landsforeningen Okologisklorder, Copenhagen, Denmark
 Charles Arden-Clarke, World Wide Fund for Nature—International, Gland, Switzerland
 Gilbert Arum, Kenya Energy and Environment Organizations, Nairobi, Kenya
 Asociación Soriano para la defensa de Recursos Naturales, Soriano, Uruguay
 Australians for Animals
 Janet Beil, Intermediate Technology, London, United Kingdom
 Brent Blackwelder, Friends of the Earth USA, Washington DC, USA
 Ross Bluestein, National Toxics Campaign, Boston, Massachusetts, USA
 Barbara Britten, American Cetacean Society, Washington DC, USA
 Rudolf Buntzel, European Ecumenical Organization for Development, Waldenburg, Germany
 William H. Bywater, International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers (IUE), AFL-CIO, Washington DC, USA
 Humberto Campodónico, Centro de Estudios y Promoción del Desarrollo, Lima, Peru
 Patricia Camey, EarthSave, Santa Cruz, California, USA
 Kim Carstensen, WWF Denmark, Copenhagen, Denmark
 Pratap Chatterjee, Action for Solidarity, Equality, Environment and Development, Amsterdam, Netherlands
 Helge Christie, GATT Campaign, Tolga, Norway
 Barry Coates, WWF UK, Godalming, United Kingdom
 David Cooper, Group for Environmental Monitoring, Newtown-Johannesburg, South Africa
 Rosiska Darcy de Oliveira, IDAC, Rio de Janeiro, Brazil
 Kristin Dawkins, Institute for Agriculture and Trade Policy, Minneapolis, USA
 Susan Denzer, Citizen Trade Watch, Washington DC, USA
 Chad Dobson, Bank Information Center, Washington DC, USA
 Elaine Dodge, Government Accountability Project, Washington DC, USA
 Martine Drake, Consumers Network on Trade, London, United Kingdom
 Evi Dubrow, International Ladies' Garment Workers Union, Washington DC, USA
 Cameron Duncan, Greenpeace USA, Washington DC, USA
 ECO-Tacuarembó, Tacuarembó
 Eto-Ecologistas de Maldonado, Maldonado, Uruguay
 Allan Fajardo Reina, Concertacin, Managua, Nicaragua
 Jay Feldman, National Coalition Against the Misuse of Pesticides, Washington DC, USA

Anna Focá, Movimento Liberazione Sviluppo, Rome, Italy
 Arif Gamal, Natural Resources Protection Group, Khartoum, Sudan
 Manuel García Urrutia, Frente Auténtico del Trabajo, Mexico City, Mexico
 Dawood Ghaznavi, WWF Pakistan, Lahore, Pakistan
 Linda Goladner, National Consumers League, Washington DC, USA
 Grupo Ecologista Barro y Sola, Vergara, Uruguay
 Grupo Ecologista de Paysandu, Paysand, Uruguay
 Grupo Eto-ecologista Madre Tierra, Montevideo, Uruguay
 Davison Joe Gumbo, Environnement et Developpement du Tiers-Monde, Harare, Zimbabwe
 Katherine Hanley, Environmental Investigation Agency, Washington DC, USA

Ms. WALLACH. The World Trade Organization's rules must be seen taken together, because the legally operate as a whole. In my written testimony, I have gone through all of the gory details, and 90 footnotes later have laid out how the rules of two separate chapters of substantive provisions concerning standards, would interact to undermine existing U.S. laws and limit future efforts in the areas of consumer and environmental protection.

In this text, there are many deceptive provisions that seem to allow the United States to do as it will. Provisions will start out saying a country may have higher standards, and it goes on for awhile, and you get to the last sentence—"in accordance with the other provisions in this agreement," and that turns out to be the killer. The final phrase guts the pleasing-sounding rhetoric of the provision. The devil, as with most legal texts, is in the details. And in five separate conceptual ways, with these rules operating together as a whole, U.S. environmental and consumer protection is undermined.

First, there is harmonization of standards. Harmonization is a euphemism for the notion that having one standard means trade flows more easily. The concept is not necessarily troubling to some consumer groups. However, the problem is that, if you look at the specific harmonization rules for both food and technical standards in the Uruguay Round, the results of the harmonization provisions will be a downward pressure on higher standards. The agreement's effect will be downward harmonization of our higher standards. That is the case because, first, national standards are to be based, in the name of harmonization, on international standards. To the extent these standards are named specifically and are known, initial studies have shown them to be less protective than U.S. law. Yet, we are required to base our standards on these international standards.

Just for instance, for food, the international standard named is the CODEX Alimentarius. There are 40 pesticides with 569 tolerances for uses on food that CODEX allows, that the United States has no—zero—no allowance of whatsoever. Eight of those are listed by the World Health Organization as extremely hazardous; six of them are listed by the United States as known carcinogens. These are the international standards on which we are to base our standards?

As well, under the harmonization rules, there is no floor only a ceiling on protection. While a domestic standard must pass an entire series of tests if that standard at home is higher than the international standards, there is absolutely no rule about a domestic standard being lower than the international standard. Too weak

is OK. There is just one pressure in these rules and it is downward.

As for No. 2, if your domestic standard is higher than the international standard, you must pass a series of difficult tests about both the goals your law would attempt to meet, and the means that can be used to achieve any GATT-allowable goals. As far as how policy goals are limited, this is where the GATT tests gets incredibly intertwined and complicated. To quickly summarize, No. 1, the rules would elevate the role of science in food policy decisionmaking. Now certainly, science has an important role to play in informing policymakers, but ultimately, the degree of risk our population will be exposed through the food supply is the decision of elected policymakers, be it here or in State legislatures. Under the Uruguay Round there is also a test for "sufficient science" which begs the second-guessing of whether or not the science underlying our food policy is good enough. In my testimony I cite at length from the NAFTA statement of administrative action in which the Clinton administration lays out what a great improvement the NAFTA language on science is because the language was "fixed" from the GATT language so there would not be any of this second-guessing of science. So, here we are, with Congress facing the GATT language and the second-guessing problem. What this means is that a U.S. law could be challenged because some company gets a new scientific test showing some substance is safe after other tests have found it to be unsafe.

As well, there is a requirement that standards be based on risk assessment and science to start with. The laws for which these limitations and combinations are serious problems are, for instance, where Congress has made a policy decision such as the Delaney clause for food. Twenty-five years ago Congress said: "No cancer added to our food supply." It was a policy decision, it was not a risk assessment about how much cancer can be in the U.S. food supply. Under this agreement each U.S. law that would be challenged would have to meet each prong of each of these tests before the secret tribunal, or it would be ruled against and have to be eliminated or amended.

Means to obtain policy goals are also limited. Just assuming you get a law through all those goals tests, then the panel gets to review the means Congress has chosen even to accomplish GATT-allowable goals. This is problem No. 3. The key rule here is "least-trade restrictive." A fundamental rule of this World Trade Organization proposal is that all domestic laws must be first and foremost "least-trade restrictive." But, that is not how legislation is created here with the primary goal being minimizing trade effects and then other goals achievable only with that framework. The test here is, for instance, is there a rational basis between a goal and the means to accomplish it. Under the least-trade restrictive test, it does not matter if the less-trade restrictive option is politically possible. For instance, consider the example of the raw log bans in two Northwestern States and Federal law as a means to save the forest in the Pacific Northwest. This means has massive trade impacts, but it is the only politically possible way to accomplish the goal of saving the forests.. Finally, it is important to note that the least-trade restrictive test has never existed in writing in a binding way under

dispute resolution in GATT. Except approval of this text would do that. To date, the least-trade restrictive test has had no political legitimacy because it has been in GATT case law only.

Then item No. 4: "Equivalence." There are provisions in both the food and the technical standards that require that the United States accept standards of other countries that are not the same as ours, but that are determined to be "equivalent." The problem is, there is no definition of what is "equivalent." These vague provisions invite the wholesale circumvention of our laws. Two unpleasant examples of "equivalence" have already happened. Under the U.S.-Canada Free Trade Agreement which has similar language, U.S. meat inspection was circumvented after Canadian inspection was determined to be "equivalent" until a whistleblower USDA inspector warned people that dirty meat was flooded onto U.S. grocery shelves. Similarly, Canada has used the U.S.-Canada equivalence to challenge Puerto Rico's decision to pasteurize its milk and to come up to the Federal standard as not meeting equivalence rules.

And finally, the fifth prong is changes in U.S. statutes existing up front as part of the implementing legislation. Certainly of consumer interest is a rewrite of U.S. meat and poultry inspection laws accomplished in the GATT bill. This damage is done right in the bill, so in this case it isn't necessary to wait for a trade challenge to see what happens to our consumer protection.

In conclusion, then, all U.S. Federal laws, and as well State laws, are subjected to all of the World Trade Organization's substantive rules and to this dispute resolution system. State laws, as is set forth in my testimony, are especially at risk. No. 1, because the Federal Government is given a stronger requirement to keep States in line in this agreement as compared to in the existing GATT, and No. 2, because there are new substantive provisions that would allow for additional challenges of State laws.

Thus, all of these U.S. laws would be put before secretive trade tribunals where the judges have no conflict-of-interest laws, and in fact they are picked for temporary service off a roster of people who are doing other trade business. They are professors; they are trade lawyers. It is totally secret, so secret that 60 publishers of newspapers and heads of journalistic societies wrote to the President describing how it was unacceptable for such a powerful organization to forbid them to even obtain documents, much less be present at these hearings of challenges to U.S. law.

And finally, the big club to enforce these rules and tribunals are automatic trade sanctions. If Congress does not change the laws, that these tribunals, three trade experts in a room, decide do not meet the rules, the United States would be hit with perpetual trade sanctions.

So, in conclusion, I would only pose the question of why any country's legislature, and certainly why the U.S. Congress, would contemplate putting its democratically achieved laws, and as well those of its State governments, at the mercy of this whole system of complicated tests and trade tribunals of the World Trade Organization.

Thank you.

[The prepared statement of Ms. Wallach follows:]

PREPARED STATEMENT OF LORI WALLACH

Mr. Chairman, thank you for the opportunity to testify on the implementing legislation for the Uruguay Round Agreement negotiated under the auspices of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) that it would establish.¹

My name is Lori Wallach. I am the director of Public Citizen's Trade Program. On behalf of Public Citizen and its members nationwide, I would also like to thank you for using the 45 days provided under fast track to hold these hearings on GATT.

Public Citizen has been involved since 1991 in efforts to ensure that the Uruguay Round agreement did not undercut domestic health, safety and environmental laws, nor the domestic policymaking procedures in these areas that ensure access to interested citizens and accountability over decisionmakers. Our analysis of the Uruguay Round text and its implementing legislation has led us to join the unanimous conclusion of the U.S. environmental movement and the conclusion of almost every U.S. citizens' group that has taken a position on GATT²:

The Uruguay Round proposal poses a serious threat to vital U.S. federal and state consumer and environmental laws and policy-making mechanisms.

In fact, it our conclusion that the Uruguay Round Agreement poses the single greatest and broadest threat to consumer and environmental laws and the democratic establishment of such policies. It is on this basis that we urge the Congress to reject this agreement.

I. SUMMARY

A. The World Trade Organization Would Preset the Parameters of U.S. Consumer and Environmental Policy by Proscribing Policy Goals and Means to Obtain Even GATT-Allowable Goals.

At stake with Congress' decision on the Uruguay Round is the fundamental transformation of the existing GATT, an international commercial contract, into a powerful new international organization with enforceable substantive rules that would limit and shape the policies of each member nation on matters far beyond trade and commerce. Most simply, the Uruguay Round would put onto place comprehensive international rules about what policy objectives a country may pursue and what means a country may use to obtain even GATT-legal objectives. Effectively, this system would preset the parameters for domestic policy-making worldwide within criteria that consistency place maximizing trade liberalization as the ultimate and superior policy goal.

The requirement set forth in the World Trade Organization's rules would apply to existing federal, state and local laws, as well as to future laws.³ U.S. laws would be required to conform with the GATT criteria. The World Trade Organization text provides that:

"Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."⁴

The Uruguay Round text dramatically extends detailed trade disciplines to many issues, such as food and product safety standards, that have traditionally been controlled by domestic policy-makers. Such GATT rules would be enforced through the

¹Citations to the Uruguay Round text are to the December 15, 1993 text published by the Office of the United States Trade Representative. Citations to the GATT implementing bill are to H.R. 5110 transmitted to the Congress on September 27, 1994.

²Unlike the recent debate on the North American Free Trade Agreement, because the provisions of the Uruguay Round are so detrimental to consumer and environmental policy all U.S. environmental groups and all but one U.S. consumer group oppose the GATT proposal. On NAFTA, there was a split in the U.S. environmental movement because while all environmental groups had concerns about the actual NAFTA text, including its food and other product standards, some groups ultimately supported NAFTA because of the so-called environmental side agreement. All of the national consumer groups also opposed NAFTA because of its food and product standards with the exception of Consumer's Union, which took no position on NAFTA. Because GATT's food and products standards are notably worse than NAFTA and no side agreements exist, the prNAFTA environmental groups have joined with the anti-NAFTA green groups and with every other consumer and other citizens' group that has a position on GATT, excepting Consumers Union, to call for congressional rejection of this deal.

³The future under the World Trade Organization was foreshadowed by the recent Clinton Administration announcement that all future U.S. environmental proposals would be put through trade reviews to ensure they complied with U.S. trade obligations. (Inside EPA Weekly Report, Vol. 14, N. 38, September 24, 1993.)

⁴Agreement Establishing the WTO, Art. XVI-4. The Annexed Agreements refers to all of the substantive trade rules which were negotiated in the Uruguay Round.

establishment of the powerful new World Trade Organization which has a binding dispute resolution system through which laws that do not meet GATT rules can be challenged. Successfully challenged rules must be eliminated or amended to meet the GATT's criteria or the United States would face perpetual trade sanctions against any sector of the U.S. economy the successful challenger chooses.

B. The Substantive Rules in the Areas of Food and Other Product Standards Would Undermine U.S. Consumer and Environmental Policy.

This testimony will describe how the Uruguay Round Agreement and its implementing legislation could undermine U.S. and state health, safety and environmental standards and policy-making mechanism in five specific, related ways⁵:

- (1) by requiring downward harmonization to weaker standards;
- (2) by limiting the goals the U.S. may pursue in its standards by restricting what issues would be considered "legitimate" grounds for regulation, by elevating the role of science in a manner that limits policy options, and by constraining the level of protection the U.S. could choose for even GATT-legitimate goals, including review of the scientific basis of U.S. standards and requiring that such standards be based on risk assessment;
- (3) by limiting the means the U.S. may use to promote GATT-allowable health, safety, and environmental goals with the requirement that such means be least trade restrictive regardless of political feasibility;
- (4) by requiring the U.S. to accept imports that do not meet our standards, but meet other countries' standards that are "equivalent"; and
- (5) by specific statutory changes in the implementing bill to existing U.S. standards, such as those relating to inspection standards for poultry and meat imports.

C. The World Trade Organization Would Provide Strong Enforcement of These Bad GATT Rules Through Secretive Dispute Tribunals and Trade Sanctions.

The gravity of the Uruguay Round mandates is compounded because trade challenges to health, safety, and environmental measures will be resolved by trade experts in the secretive dispute resolution system that would be established under the World Trade Organization that is stacked against consumer and environmental interests. This testimony will detail the proposed procedures of the WTO dispute resolution which would empower unaccountable trade experts to second-guess the policy decisions of the Congress and U.S. state legislatures. The dispute resolution system could undermine U.S. consumer and environmental laws both through direct challenges of existing laws and through the chilling effect threatened challenges would have on future efforts to establish laws in these areas.

D. The Uruguay Round Presents Additional Threats to State Laws.

The Uruguay Round presents new and additional threats to state law compared to the existing GATT, which itself makes federal government GATT responsible for compliance of subfederal governments. The significant rearrangement of state-federal relation that the Uruguay Round would effect has caused leading U.S. constitutional scholar and Harvard Law Professor Lawrence Tribe to call for the agreement to be considered under the constitutional provisions for treaties requiring $\frac{2}{3}$ approval by the Senate. Some sections of the Uruguay Round text, including the food standards agreement, require federal governments to "formulate and implement positive measures and mechanisms" to force state compliance with GATT rules, thus increasing the federal government obligation to include taking affirmative steps to ensure state compliance with GATT rules.⁶ Second, the specificity of the Uruguay Round standards texts provides new hooks for challenges against state laws. For instance, the food standards agreement provides that countries' standards shall not "unjustifiably discriminate between Members where identical or similar conditions prevail, including within their own territory."⁷ While the U.S. might argue that the principles of federalism justify the many difference between U.S. federal and state laws covering the same issue, the GATT does not support federalism as a legitimate basis for such action. In fact, the GATT standards texts call for just the opposite, specifying that countries should harmonize standards as between themselves. Thus, under the proposed Uruguay Round text, the very difference between federal and state standards could in itself provide a new basis for trade challenge.

E. The Uruguay Round Would Result on a de Facto Shift of Power on Domestic Policy Making Away from Congress in Favor of the World Trade Organization.

⁵This testimony focuses on the four chapters of the Uruguay Round text that most directly relate to environmental and consumer protection: the Agreement Establishing the World Trade Organization (WTO Agreement), the Dispute Settlement Understanding, the Sanitary and Phytosanitary Standards (SPS Agreement), and Agreement on Technical Barriers to Trade (TBT Agreement.)

⁶SPS Agreement at paragraph 45.

⁷SPS Agreement, paragraph 7.

Proponents of the Uruguay Round have made their central defense to the anti-democratic dispute system of the proposed World Trade Organization the fact that *de jure*, the World Trade Organization could not literally change U.S. laws. This argument is either disingenuous or naive, as *de facto*, acceptance of the World Trade Organization dispute system would place the U.S. Congress in an untenable position: either eliminate or alter such challenged laws or face perpetual economic sanctions. Effectively, by agreeing to this process, the U.S. would be placed in a situation in which it be required to pay a perpetual bribe merely for the honor of maintaining its law. Moreover, the potential to put Congress in this position will provide a great incentive for U.S. companies to "rent-a-government" to pursue trade challenges of policies that could not be shaped to their liking through the democratic process. The political power balance will *de facto* be reshaped when a U.S. law that has been successfully challenged would have added to its opponents whatever industry is the selected target for sanctions. Thus, a successful challenge of a U.S. food safety law could result in sanctions against the U.S. telecommunications industry, adding to the food law's chemical company and agribusiness opponents a list of telecommunication giants who would pressure Congress to stop the sanctions by following GATT's demands to change or eliminate the law.

The outcome of pitting additional economic interests against U.S. environmental and consumer laws has been foreshadowed. Already, the mere threat of such challenges or adverse trade effects under the weaker existing GATT dispute system has chilled action or caused reversals on environmental and consumer issues. For instance, after a 1991 threat of GATT action by the European Community, EPA issued a interim tolerance based on data it had concluded in public rulemaking was not sufficient that allowed European wine imports containing a pesticide, procymidone, not allowed in the U.S.⁸ After Venezuela threatened GATT action in the spring of 1994, the Administration attempted to reverse Clean Air rules for Venezuelan gasoline imports despite the final agency rule having been developed in a rulemaking in which the Venezuelan government had already participated. Ultimately, Congress reversed the Administration and in early October, Venezuela filed a GATT challenge. As well, threats of GATT action in 1991 by countries involved in the importation of wild-caught birds for the pet trade caused the Bush Administration to hold hostage until the last day of the 102nd Congress a bill banning sale of wild caught birds which was ultimately passed after it had been weakened.

II. THE URUGUAY ROUND JEOPARDIZES FOOD SAFETY AND OTHER HEALTH, SAFETY, AND ENVIRONMENTAL STANDARDS

The Uruguay Round Agreement and its implementing text could undermine U.S. and state health, safety and environmental standards in five related ways:

- (1) by requiring downward harmonization to weaker standards;
- (2) by limiting the goals the U.S. may pursue in its standards;
- (3) by limiting the means the U.S. may use to promote GATT-allowable health, safety, and environmental goals;
- (4) by requiring the U.S. to accept imports that do not meet our standards, but meet other countries' standards that are "equivalent;" and
- (5) by specific statutory changes existing in the implementing bill to existing U.S. standards, such as those relating to inspection standards for poultry and meat imports.

The gravity of the Uruguay Round mandates is compounded because trade challenges to health, safety, and environmental measures will be resolved by trade experts in the secret system described below that is stacked against consumer and environmental interests.

The Uruguay Round's principal standards provisions are found in the Agreement on the Application of Sanitary and Phytosanitary ("SPS") Measures, which addresses measures to protect human, animal, or plant life or health from risks arising from additives, contaminants, toxins, diseases, or pests, where such measures may, directly or indirectly, affect international trade,⁹ and in the Agreement on Technical Barriers to Trade ("TBT"), which covers all product regulation other than that addressed in the SPS Agreement.¹⁰ Both Agreements address a vast expanse of domestic regulation, ranging from end-product criteria to labeling and packaging require-

⁸ 56 Fed. Reg. 19,518 (April 26, 1991.)

⁹ SPS Agreement, Annex, paragraph 1.

¹⁰ TBT Agreement paragraph 1.5; Annex 1, paragraphs 1-3.

ments to risk assessment methods to testing, certification, inspection, and approval procedures.¹¹

Although many of the specific provisions differ, both Agreements promote downward harmonization of health, safety, and environmental standards. They also both impose significant limitations on the goals that countries' may pursue in such standards and the means that they may use to achieve those goals.

A. The Uruguay Round's Harmonization Provisions Could Have the Effect of Forcing the United States and the States to Lower Health, Safety and Environmental Standards.

In order to promote the harmonization of food safety and other standards, the GATT standards agreements require countries to base their domestic standards on international standards. The SPS Agreement requires countries to "base their sanitary and phytosanitary measures on international standards, guidelines or recommendations. * * *"¹² Domestic standards that conform to international ones are presumed to be consistent with both the SPS Agreement and GATT, although that presumption may be rebutted.¹³ Domestic standards that do not conform to international ones must satisfy a battery of GATT tests in order not to be considered an unfair trade barrier.

The Agreement permits countries to have food safety measures that achieve a higher level of protection than relevant international standards only in two circumstances.¹⁴ These circumstances are discussed below in connection with constraints on the level of protection afforded by food safety standards. Even where a higher level of protection is permissible, the standard, on its face and as applied, must comply with all of the other GATT requirements to pass muster under GATT.

The TBT Agreement requires countries to base technical standards and conformity assessment procedures on international standards, even where they are not yet completed, but their completion is imminent.¹⁵ The only exception is when the international standard "would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems."¹⁶

Note that the examples are both modified by the word "fundamental" and they are objective rather than subjective conditions. Noticeably omitted from the list of exceptions is that the international standard provides an insufficient level of protection, a factor specifically listed in an analogous provision elsewhere in the TBT Agreement.¹⁷ Thus, the TBT Agreement substantially limits the reasons that may justify not using an international standard and also allows the legitimacy of a country's objectives to be called into question.

By requiring U.S. standards to be based on international ones, and establishing an entire separate set of rules applicable only to those rules that provide greater public health protection than international standards, the Uruguay Round creates strong incentives for avoid exceeding international standards. The international standards serve as a ceiling, not a floor, curtailing innovative solutions to public health problems that are ahead of the international status quo, but not requiring that any solutions be put into place. In other words, the Uruguay Round contains no incentives, let alone any mandates, that countries, at a minimum, afford the level of protection provided by relevant international standards.

Such downward harmonization would have alarming public health consequences. International standards are generally developed in secret with extensive industry input, but no public oversight or participation. Thus, they are often weaker than U.S. standards.

The SPS Agreement identifies the Codex Alimentarius Commission ("Codex") as the international body establishing presumptively trade legitimate food safety standards. Codex is a U.N. body established in 1962 primarily to facilitate international trade by addressing health issues in the trade context. It is made up of government officials, who participate with the active assistance of industry advisors. National industry food giants, such as Hershey Foods, Nestle U.S.A., Kraft General Foods, Coca Cola Company, and Pepsi Company, and trade groups, such as Grocery

¹¹ The term "standards" is used herein to refer to all laws, regulations, guidelines, requirements, recommendations, inspection, conformity assessment, and other procedures that are covered by the SPS and TBT Agreements. Other Uruguay Round provisions may also affect health, safety, and environmental protections, such as the Agreement on Government Procurement, and the Agreement on Subsidies and Countervailing Measures.

¹² SPS Agreement at paragraph 9.

¹³ Id. at paragraph 10.

¹⁴ Id. at paragraphs 11, 16-23.

¹⁵ TBT Agreement at paragraphs 2.4, 5.4.

¹⁶ Id. at paragraph 2.4.

¹⁷ Id. at Annex 3, paragraph F.

Manufacturers of America and the National Food Processors Association, have been present in full force at Codex meetings.¹⁸

Public Citizen and the Environmental Working Group published an extensive study on the Uruguay Round's implications for U.S. food safety that closely analyzed Codex standard-setting procedures and compared some Codex standards to U.S. standards in the area of pesticides.¹⁹ In summary, that study found that the Codex pesticide standard-setting process is poorly suited to the task of setting presumptively correct international pesticide standards because: Codex's public health mission has lagged behind its trade agenda; Codex operates with extensive influence from the chemical and food industries and little consumer, environmental or public input; Codex has no minimum requirements for the content and completeness of the data sets that it uses to establish allowable levels of pesticides on food; Codex does not assess human dietary exposures to pesticides in different countries when establishing tolerance for pesticides in international commerce; and Codex uses a generally less protective standard-setting process than the United States to regulate carcinogens.

Many Codex standards are less protective of public health than U.S. standards. Original scientific analysis done by the Environmental Working Group concluded that there are 40 pesticides with 569 Codex tolerances where the United States has no tolerance for any food use at all. Of these 40, eight are rated as highly hazardous by the World Trade Organization and six are classified as carcinogens by the U.S. EPA. There are 1,787 pesticide/crop combinations where Codex allows greater amounts of pesticide residues, and thus less health protection, than U.S. standards do.²⁰

B. The Uruguay Round Imposes Limitations on the Goals the U.S. May Legitimately Pursue in its Standards.

1. Limitations on Food Safety Goals

The Uruguay Round limits the goals that countries may pursue in their domestic food safety laws in several important ways.

a. The Uruguay Round's Scientific Basis and Risk Assessment Requirements Would Constrain Food Safety Measures.

Under the Uruguay Round, food safety measures that exceed Codex standards:

- must be "based on scientific principles;"
- must "not be maintained without sufficient scientific evidence;" and
- must be based on a risk assessment, taking into account risk assessment techniques developed by relevant international organizations.²¹

These requirements taken together attempt to eliminate all "non-science" factors from food standard-setting. However, political judgments play a central role in food safety policy-making. While science plays a valuable role in informing such policy decisions, it is ultimately Congress or a state legislature that must make the political decision about how much risk society will face under a food safety law. Thus, Congress may make the political decision to allow zero risk from a particular hazard, rather than establishing an allowable level of risk. Or, Congress may decide under the notion of the precautionary principle, not to allow exposure to a substance until it has been proved safe before there is conclusive scientific evidence that the substance is harmful.

The Uruguay Round's science requirements may jeopardize cutting-edge food safety regulation in areas, such as food irradiation, biotechnology, and the use of growth hormones in beef production, where the scientific evidence is not yet in, but a country wishes to protect its citizens from possible, but uncertain, harm under the precautionary principle. Indeed, the United States claimed that a European Community ban on imports of hormone-treated beef lacked scientific support, and thus was a disguised restraint on trade.

b. The Uruguay Round Would Enable Trade Experts to Second-Guess the Sufficiency of the Scientific Evidence Underlying Food Safety Standards

The requirement that a standard not be "maintained without sufficient scientific evidence"²² is in contrast to the NAFTA requirement that an SPS measure not be

¹⁸ See Ritchie, "GATT, Agriculture and the Environment: The Double Zero Plan," 20 *The Ecologist* 214, 217 (Nov./Dec. 1990); 56 *Fed. Reg.* 29,050-51 (June 25, 1991).

¹⁹ Public Citizen and the Environmental Working Group, *Trading Away U.S. Food Safety*, April 1994.

²⁰ *Id.* at ii.

²¹ SPS Agreement, paragraphs 6, 16-17.

²² SPS Agreement, paragraph 6.

maintained "where there is no longer a scientific basis."²³ The Administration stressed the importance of the precise language used in NAFTA's SPS provisions:

It is clear that under the NAFTA, the requirement that measures be based on "scientific principles" and not be maintained "where there is no longer a scientific basis" do not involve a situation where a dispute settlement panel may substitute its scientific judgment for that of the government maintaining the sanitary or phytosanitary measure. The question under the NAFTA in this regard is whether the government maintaining the * * * measure has "a scientific basis" for the measure. "Scientific basis" is defined as "a reason based on data or information derived using scientific methods." The question is also not whether the measure was based on the "best" science or the "preponderance" of science or whether there was conflicting science. The question is only whether the government maintaining the measure has a scientific basis for it.²⁴

NAFTA and the Uruguay Round both require that SPS measure be based on scientific principles. Where the WTO Agreement differs is in what scientific basis is required to continue the validity of a measure over time. NAFTA requires only a scientific basis, which it defines as "a reason based on data or information derived using scientific methods." The Uruguay Round requires that measures be based on "sufficient" scientific evidence. Thus, the Uruguay Round invites other countries and dispute settlement panels to second-guess the sufficiency of the scientific evidence underlying legislative and regulatory decisions opening U.S. laws to attack on the basis of dueling science.

The term "sufficient" is not defined in the Uruguay Round text. Thus, it is not clear whether it is a procedural requirement that some scientific evidence exist or a substantive requirement going to the content and strength of the evidence. The decision of what sort of burden the subjective term "sufficient" places on a country defending its food standard is in itself a subjective decision that the Uruguay Round would empower dispute resolution panelists to determine in closed World Trade Organization dispute resolution proceedings.

2. *The Uruguay Round Risk Assessment Mandate Would Preclude the Strongest Food Safety Standards*

Under the Uruguay Round, food safety measures must be based on risk assessment. Risk assessment is rooted in the notion that the exposure to all toxins, regardless of potency, is safe, if the exposure is low enough. The foundation of risk assessment is the notion that scientists can accurately predict the consequences of a numerous and ever-expanding list of different food additives all interacting in the human body. In fact, scientists will never be able to make these determinations. For this reason, many scientists, regulators and consumer and environmental organization are calling for public health policies that prevent such exposures in the face of scientific uncertainty and reduce the toxic load in food.

However, by requiring food safety standards to be based on a risk assessment, the Uruguay Round eliminates the possibility that a society's values—for example, prevention of exposure to highly toxic substance in the presence of uncertain knowledge of the chemical's effects on humans at low doses—should outweigh the uncertain outcome of a risk assessment.

Under this risk assessment requirement, measures such as the Delaney Clause, which prohibits the use of certain carcinogenic food and color additives, are at risk because it is a 30-year-old congressional policy judgment to protect the public from uncertain risks that is now attacked by industry as being scientifically outmoded. As a measure establishing a zero-risk standard, permitting no exposure to certain additives, it is not based on quantitative risk assessment. California's Proposition 65, which requires warnings before exposing the public to cancer-causing substances or reproductive toxins, would be threatened because it was adopted as a popular referendum rather than a regulatory determination "based on scientific principles" and risk assessment.

Moreover, the Uruguay Round requires countries to use risk assessment techniques developed by relevant international organizations, in the case of food standards those of the Codex Alimentarius. The Codex version of risk assessment is seriously flawed.²⁵ The Uruguay Round mandate to use risk assessment techniques developed by Codex could have devastating consequences for U.S. food safety standards.

²³ NAFTA Article 712(3).

²⁴ Statement of Administrative Action at 93.

²⁵ See Public Citizen and the Environmental Working Group, *Trading Away Food Safety*, Chapter 6.

a. Level of Protection for Food Safety Measures

The Uruguay Round imposes significant hurdles on a country's ability to provide greater public health protection than that provided by relevant international standards. Thus, higher levels of protection are permitted in only two circumstances.

First, a country may have a higher level of protection "if there is a scientific justification."²⁶ Such a justification may be evident only if a country concludes that the international standard is "not sufficient to achieve its appropriate level of protection" based on "an examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement."²⁷ In other words, the scientific justification must be based on risk assessment undertaken in accordance with GATT's terms. As noted above, since the level of protection is a policy judgment made through legislation or regulation as a political matter, this exception will rarely be useful to safeguard U.S. standards that provide a higher level of protection than international standards. For instance, the Delaney Clause was based on a congressional decision not to expose the American public to cancer risks in the food supply, thus its level of protection may not be considered to be based on an examination or evaluation of scientific evidence.

Second, a country may have a higher level of protection if it bases that level of protection on a risk assessment undertaken in accordance with GATT, and it achieves consistency in its levels of protection against all risks to human life or health or to animal and plant life or health in its SPS measures.²⁸ More specifically, countries must "avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade."²⁹ The term "unjustifiable" is inherently subjective and value-laden, which invites countries, and ultimately dispute settlement panels to substitute their own judgments for those made by domestic regulators and policymakers. The same may be true of the term "arbitrary." As one pro-GATT commentator has asked, "is it arbitrary to have a zero-risk standard for carcinogenicity but a less protective risk standard for bacterial contamination?"³⁰

This prohibition on unjustifiable distinctions in levels of health protection applies apart from the relevance any international standard. Thus, it is applicable where no international standard exists, and it could form the grounds for rebutting the presumption that use of an international standard is consistent with GATT.

Thus, U.S. food safety standards may be vulnerable to challenge because of the many distinctions in the levels of protection afforded in standards dealing with various exposures to pesticides, food additives, microbiological contamination, and food irradiation, particularly when state standards are in the calculus. For pesticides residues in food, 0 risk is permitted for certain exposures to carcinogens, 1 in 1,000,000 risk is allowed for some health effects, including other exposures to carcinogens, and greater health risks are permitted in still other situations. In contrast, there are few standards for fish inspection laying out the level of risk permitted. Moreover, because states are permitted to provide greater public health protection than the federal government, less risk may be tolerated in a particular state.

In addition to avoiding unjustifiable distinctions in levels of protection, countries are admonished to "take into account the objective of minimizing negative trade effects" in setting their appropriate levels of protection.³¹ Of course, many food safety statutes establish a public health mandate that forbids consideration of such trade concerns.

2. The Uruguay Round Would Limit the Goals of Technical Standards

The TBT Agreement provides as examples of the "legitimate objectives" that may be pursued in technical regulations and standards: "national security requirements; the prevention of deceptive practices; and protection of human health or safety, animal or plant life or health, or the environment."³² The TBT Agreement presumes that technical regulations conforming to international ones do not create unnecessary obstacles to trade if they are adopted or applied for one of these legitimate objectives.³³ For this purpose, the listing is exhaustive.

²⁶ SPS Agreement at paragraph 11.

²⁷ *Id.* at paragraph 11 n.2.

²⁸ *Id.* at paragraphs 11, 16-20.7.

²⁹ *Id.* at paragraph 20.

³⁰ Charnovitz, Steve, "The World Trade Organization and Environmental Supervision," *International Environmental Reporter*, at 90. (Jan. 26, 1994.)

³¹ *Id.* at paragraph 19.

³² TBT Agreement at paragraph 2.2.

³³ *Id.* at paragraph 2.5.

The listed objectives do not include sustainable development, which was expressly included in the NAFTA as a legitimate standards objectives.³⁴ Nor does it include animal welfare, which was intentionally excluded from the SPS text, according to an explanatory paragraph in the last Uruguay Round text. Thus, trade restrictions imposed pursuant to humane slaughter laws would likely be considered unfair trade barriers because they regulate a process unrelated to recognized characteristics of the final product.

Moreover, as regards level of protection, the TBT Agreement requires countries to base technical standards and conformity assessment procedures on international standards, even where they are not yet completed, but their completion is imminent.³⁵ The only exception is when the international standard "would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems."³⁶ Noticeably omitted from the list of exceptions is that the international standard provides an insufficient level of protection, a factor specifically listed in an analogous provision elsewhere in the TBT Agreement.³⁷ Thus, the TBT Agreement substantially limits the reasons that may justify not using an international standard and also allows the legitimacy of a country's objectives to be called into question.

C. The Uruguay Round Would Limit the Means to Achieve Legitimate Health, Safety and Environmental Goals, Including Those Deemed GATT-Allowable.

The Uruguay Round imposes significant limitations on the trade restrictions that may be imposed as part of domestic regulation. Often the most effective health, safety, and environmental measures impose greater trade restrictions than less effective alternatives. For this reason, constraints on the means that may be used to achieve legitimate goals could be devastating to strong protections.

1. The Uruguay Round Would Limit the Means to Achieve Food Safety Protection

Food safety measures may be "applied only to the extent necessary to protect human, animal or plant life or health."³⁸ In addition, countries must ensure that their food safety measures "are not more trade restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility."³⁹ A footnote provides that "a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade."⁴⁰

The alternative measures need only be technically and economically feasible, they do not need to be politically feasible. This distinction is critical. For instance, the only politically feasible way to obtain the goal of slowing the logging of old growth forests in the Pacific Northwest was a measure that is possibly the most trade restrictive: a ban on the exports of raw cut logs. After years of stalemate on the issue while the forests were logged, this measure would slow logging while also satisfying the powerful political interest of providing employment in log processing to lumberjacks who would no longer be chopping down old growth forests. It was the only politically feasible measure, yet in a political vacuum, there are obviously less trade restrictive ways to meet the policy objective of saving the forests.

While this example does not pertain to food and thus would not fall under the SPS Agreement, the same least trade restrictive test applies under the TBT Agreement and the raw log ban provides a good example of the least trade restrictive problem because it has already been threatened in the press with a challenge from Japan.

As related directly to food, under the least trade-restrictive alternative test, any product ban may be called into question, since bans are the most trade-restrictive measures available. Thus, a ban could be challenged on the ground that permitting small exposures, labeling foods, or washing or other handling precautions would meet the level of protection.

An EPA ban on pesticide residues on a particular food could be challenged on the ground that permitting trace residues would achieve the same level of protection. The Circle of Poisons Prevention bill, which, if enacted, would ban the export of certain hazardous pesticides in part to prevent them from being used on foods exported back to the U.S. A challenger could argue that the export ban is not necessary be-

³⁴ NAFTA Article 915.

³⁵ TBT Agreement at paragraphs 2.4, 5.4.

³⁶ Id. at paragraph 2.4.

³⁷ Id. at Annex 3, paragraph F.

³⁸ SPS Agreement at paragraph 6.

³⁹ Id. at paragraph 21.

⁴⁰ Id. at paragraph 21 n.3.

cause permitting the export but monitoring for the residues would achieve the chosen level of protection. EPA's coordination policy precludes carcinogenic pesticides on raw commodities, where the pesticide concentrates in processed foods. The Delaney Clause prohibits residues of the carcinogenic pesticides only in the processed foods, but EPA has extended the pesticide ban to the raw commodities because it does not know which tomatoes will be used to make tomato sauce. A challenger could argue, as industry has, that this policy is not "necessary" because FDA could monitor the processed foods for the residues instead. A ban on dyes, genetically altered produce, or fish with lead levels that are safe for everyone, except pregnant women and children or other vulnerable subpopulations, might be challenged on the ground that warnings would suffice.

The "taking into account technical and economic feasibility" language may prevent a country from using its chosen means because of economic considerations. It might also preclude the use of technology forcing regulations that impose stringent requirements in order to force technological improvements, such as EPA's phaseout of certain uses of the pesticide carbofuran, even though substitutes were not available when the phaseout was established, or a ban the use of lead solder in food cans five years from now in order to force industry to come up with alternatives.

Aspects of the 1990 Nutritional Labeling and Education Act might be vulnerable to a trade-restrictive alternative challenge. Thus, mandatory labeling designed to provide consumers information about carcinogens or potentially harmful additives, such as salt, MSG, nitrites, or sulfites, could be challenged on the ground that voluntary labeling would suffice or that not all foods need to be covered by mandatory requirements. Indeed, both Japan and the European Community have already made claims that the mandatory nutritional labeling is an unfair trade barrier.⁴¹

2. *The Uruguay Round Would Limit the Means to Obtain Technical Standards Goals*

The TBT Agreement also embraces the unnecessary obstacles to trade and least trade-restrictive alternative tests. Thus, technical regulations and conformity assessment procedures may not be "prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade."⁴² Technical regulations may not be "more trade-restrictive than necessary to fulfill a legitimate objective, taking into account the risks non-fulfillment would create."⁴³ This sentence is immediately followed by factors that must be taken into account "[i]n assessing such risks," thereby envisioning a risk assessment or cost-benefit analysis. Conformity assessment procedures may not be more strict or applied more strictly than necessary to give confidence that products conform to technical regulations and standards.⁴⁴

In addition, technical regulations may "not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner."⁴⁵

Under these provisions, Canada could argue, as it did in an amicus brief, that a phaseout of all asbestos should not apply to the asbestos produced in Canada because it presents less of a health risk, which can be controlled through use restrictions, than the other types at which the phaseout was principally directed. If (as it once did), the Department of Transportation required trucks to use antilock brakes, a challenger might argue that anti-jack knife devices would have the same effect, even though it takes much longer to stop the truck with them. If the U.S. decided to ban asbestos-lined brakes because U.S. workers are exposed to the asbestos when they install or repair the brakes, another country could argue that the ban is unnecessary because the workers could use protective clothing and ventilation to limit the risk. If Congress bans toy balls with a diameter less than 1.75 inches for small children, a challenger could argue that the measure is unnecessary because

⁴¹ The Uruguay Round also prohibits arbitrary or unjustifiable discrimination between countries where identical or similar conditions prevail, and the application of measures in a manner that constitutes a "disguised restriction on international trade." Paragraph 7. A narrow construction of the latter requirement would simply require that the measure be a matter of public record or that it be the result of an open rulemaking or administrative proceeding. Under such a construction, FDA action levels, which indicate when FDA will enforce pesticide residue and food additive standards, may be open to challenge. A broader construction might permit challenges to a food safety measure on the ground that its underlying effect is to restrict trade. For example, a ban on listeria in cheese, which is only imported, while listeria is not banned in other products, might be viewed as a hidden trade restriction.

⁴² TBT Agreement at paragraphs 2.2, 5.1.2.

⁴³ Id. at paragraph 2.2.

⁴⁴ Id. at paragraph 5.1.2.

⁴⁵ Id. at paragraph 2.3.

of inadequate evidence of harm or that hard plastic or wood balls should not be subject to it. If OSHA phased out cadmium batteries because the cadmium leaches into ground water in landfills, a challenge could be mounted because most substitutes also contain heavy metals that would present similar problems. Recycling schemes and packaging requirements may be vulnerable. In past trade challenges, the European Court of Justice invalidated a component of a Danish recycling scheme requiring the use of reusable containers that could be handled by facilities in Denmark, and the U.S. complained that Ontario's imposition of higher taxes on recyclable beer containers than on reusable ones discriminates against U.S. beer, which is sold largely in cans, as compared with Canadian beer, which is sold largely in bottles.

Our standards are in jeopardy even if they are undertaken pursuant to international environmental agreements, since there is no exception to the Uruguay Round's requirements for such standards. Thus, bans on ozone-depleting chemicals pursuant to the Montreal Protocol on Substances that Deplete the Ozone Layer or on trade in endangered species pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora would be vulnerable under the least trade-restrictive alternative test.

3. *The Uruguay Round Does Not Provide for Measures Based on Production or Process Standards*

One critical trade issue is the extent to which trade restrictions may be imposed products as a result of their processing and production methods. For example, may a country ban imports of timber that does not come from sustainable managed forests, ban imports of ivory from countries with inadequate elephant conservation programs, ban imports of beef slaughtered in violation of humane standards, ban imports of products produced with ozone-depleting chemicals, ban imports of tuna caught in a way that kills too many dolphins, ban imports of fish caught with large-scale drift nets, or ban shrimp imports caught without turtle excluder devices? This issue of process standards came to forefront in the successful 1991 Mexican GATT challenge of the U.S. Marine Mammal Protection Act.

One of the cornerstones of GATT is that like products must be accorded treatment no less favorable than that accorded like domestic products and like products imported from other countries. This nondiscrimination principle is expressly made applicable to technical regulations in the TBT Agreement.⁴⁶ It has generally been interpreted under GATT to preclude imposing restrictions on products based on the way they are produced. In the tuna-dolphin challenge, a GATT panel concluded that the U.S. ban on imports of tuna caught by methods that kill too many dolphins were impermissible because they were based on the way the tuna was caught, not any inherent characteristics of the tuna itself.

Nothing in the TBT Agreement rejects this approach. To the contrary, other TBT provisions require that product requirements be stated in terms of performance rather than design or descriptive characteristics, wherever appropriate.⁴⁷ Thus, where the process itself is regulated to prevent health or environmental harm, e.g., emissions from production or worker safety, product restrictions will likely be considered unfair trade barriers.

D. The Uruguay Round Requires the U.S. to Permit Imports that Do Not Comply with U.S. Health, Safety & Environmental Standards

The Uruguay Round requires countries to permit imports that do not comply with their own food safety standards where they satisfy different, but "equivalent," standards or processes.⁴⁸ Countries must also give positive consideration to accepting as equivalent technical regulations that differ from their own, but fulfill the objectives of their own regulations.⁴⁹

This requirement invites wholesale circumvention of U.S. law. Even if Congress has established a standard or an agency has promulgated regulations prescribing the conformity assessment procedures that will be used, imports may nonetheless be permitted. This would be done under the amorphous concept of equivalency, which calls for a subjective comparison of different standards without any clear guidelines for the process to undertake or the factors that must be considered.

Under the U.S.-Canada Free Trade Agreement, the U.S. Department of Agriculture decided that Canadian meat inspection procedures were equivalent to ours, even though the U.S. tests end products for listeria contamination, while Canada regulates the work environment in which the food is processed, and Canada does not control or test for drugs approved for use in Canada but not in the U.S. Meat

⁴⁶ TBT Agreement at paragraph 2.1.

⁴⁷ Id. at paragraph 2.8.

⁴⁸ SPS Agreement paragraph 14.

⁴⁹ TBT Agreement at paragraph 2.7.

imports were allowed into the U.S. under a cursory reinspection system. The General Accounting Office charged that the documentation did not support the conclusion that Canadian meat inspections were equivalent to the U.S. system, and meat inspectors complained that Canadian producers were taking advantage of the cursory reinspection and shipping contaminated meat. Under the U.S.-Canada Free Trade Agreement, Canada challenged Puerto Rico's refusal to permit imports of milk that did not comply with Puerto Rico's milk sanitation certification and inspection procedures. A trade panel ruled against the U.S. on the ground that Puerto Rico should not have barred Canadian milk imports until it had determined that Canada's milk sanitation certification and inspection procedures were not equivalent to Puerto Rico's.

The GATT implementing legislation, as did the NAFTA implementing legislation, would make substantive amendments to U.S. meat, poultry, and live animal inspection laws to permit imports from NAFTA countries that do not comply with those laws.⁵⁰

The Uruguay Round also requires that countries make all other member countries subject to the same food safety inspection procedures. This is so even if there has been a legitimate reason for treating the country differently. For example, special inspection procedures have been established more Mexican produce because it has higher DDT residues than domestic produce and than permitted under U.S. law.

E. The Uruguay Round Jeopardizes State Health, Safety and Environmental Measures

The Uruguay Round's restrictions on food safety and technical standards apply to state and local laws and with the existing GATT, the Uruguay Round would allow challenges against state and local laws.⁵¹ Then a WTO panel would rule that a state or local law does not meet the trade rules, the federal government is required to take such reasonable measures as may be available to it to ensure * * * observance."⁵²

A GATT panel has already interpreted the "reasonable measures" standard, which is present in the existing GATT.⁵³ Under the terms of an adopted GATT case known as Beer II, the United States must take all action available under the constitution to force subfederal compliance with trade panel rulings. This could include preemptive legislation, litigation and withdrawal of federal financial support.

The Uruguay Round presents new and additional threats to state law compared to the existing GATT which makes federal government responsible for compliance of subfederal governments. First, under the Uruguay Round, national governments would be required to take affirmative actions to ensure that subnational governments comply with the Uruguay Round. The SPS Agreement makes countries "fully responsible * * * for the observance of all obligations set forth herein."⁵⁴ They must "formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies."⁵⁵ In addition, they "shall not take measures which have the effect of, directly or indirectly, requiring or encouraging * * * local governmental bodies to act in a manner inconsistent with the provisions of this Agreement."⁵⁶ Similar obligations are imposed under the TBT Agreement.⁵⁷

Second, the specificity of the Uruguay Round standards texts provides for new hook for challenges against state laws. For instance, the SPS Agreement provides that countries' standards do not "unjustifiably discriminate between Members where identical or similar conditions prevail, including within their own territory."⁵⁸ While the U.S. might argue that the principles of federalism justify the many difference between federal and state laws covering the same issue, the GATT does not support federalism as a legitimate basis for such action. In fact, the SPS text calls for just the opposite, specifying that countries should harmonize standards as between themselves.

As well, the least restrictive alternative test could have particularly severe consequences for state regulations. Indeed, in a recent GATT dispute that did not involve GATT's health or natural resources exceptions, the panel concluded that a requirement imposed by only five states was not "necessary" because other states had

⁵⁰ GATT Implementing Legislation at Section 731.

⁵¹ DS Understanding at 22.9.

⁵² *Id.* at 22.9.

⁵³ 1991 Panel report on Canadian challenge of certain U.S. Alcohol Taxes and regulations (Beer II).

⁵⁴ SPS Agreement at paragraph 45.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ TBT Agreement at paragraphs 3.1, 3.4, 3.5.

⁵⁸ SPS Agreement, Article 2-3.

found "alternative, and possibly less trade restrictive, and GATT consistent, ways of enforcing their tax laws."⁵⁹ This rationale could be devastating if it were applied to the many health and environmental statutes that permit, but do not require, states to provide greater health or environmental protection than the federal government.

The Center for Policy Alternatives, an association of state legislators, recently commissioned a study on the state law effects of the Uruguay Round. In the first in a series of reports, a group led by a Georgetown law professor contracted by the Center concluded that the Uruguay Round would provide a "license to challenge state law."⁶⁰ While taking no position on the Uruguay Round as a whole, the report highlights the many provisions that could undermine legitimate state environmental and consumer laws and the anti-federalism philosophy that might lead our trading partners to make use of these new GATT rules in combination with the strengthened dispute resolution that would be provided under the World Trade Organization:

Since the days of Oliver Wendell Holmes, Americans have valued the role of state governments as the "laboratories of democracy" within the American federal system. Unfortunately, our international trading partners do not share the same values. The European Union, for example, decries state-level innovation as the "multiplicity of standards" which "creates impediments and even barriers to trade."⁶¹

E. Establishment of the WTO Significantly Increases the Impact Global Trade Rules Will Have on Countries' Domestic Laws

The Uruguay Round agreement would fundamentally transform the nature of the world trade rules. Since its establishment in 1947, GATT has existed as a contract between nations, which have been called "contracting parties." The trade rules of GATT have largely focussed on traditional trade matters, such as tariffs, quotas and other measures clearly taken for the economic protection of a particular industry or sector.

The Uruguay Round would establish the "World Trade Organization (WTO)," which would effectively replace the existing GATT with a new international organization. The final Uruguay Round text bestows on the WTO "legal personality," a legal status similar to that of the United Nations or World Bank.

As well, the Uruguay Round would massively expand the coverage of trade rules to impose unprecedented constraints on policy areas that have been controlled domestically. The Uruguay Round expands trade disciplines into new areas such as agriculture, services such as telecommunications and transportation, and intellectual property. The Uruguay Round would also put in place more pervasive restrictions in areas such as food standards and "technical standards" such as environmental or safety standards. Domestic laws in all of these areas must comport with international trade rules, or such laws can be challenged as "illegal trade barriers" by other countries through dispute resolution proceedings.

Establishment of the WTO also would raise the relative importance and strength of the global trade rules by giving them a permanent international organizational structure with an ongoing infrastructure and powers that GATT didn't have. All of the substantive trade rules that resulted from the Uruguay Round negotiations—agreements on trade in goods and services, intellectual property rules and more—fall under the WTO structure. Countries are obliged to ensure that their domestic laws conform with the substantive trade rules of the WTO.

The WTO rules allow changes to some trade rules by a two-thirds vote of the Members that would then be binding on all Members. Under GATT, such changes could only be taken by consensus. As well, WTO Members must accept all aspects of the WTO's underlying substantive trade rules, while under GATT countries who opposed certain provisions or additional agreements would not be bound by them unless that country so chose. From a trade perspective, this all-or-nothing rule eliminates the problem of "free riders." From a democracy perspective, this rule forces countries to accept trade in areas that might be undesirable or to forgo participation in the world trade system. The increase in power of the global trade rules relative to each countries' domestic laws is also obvious in the new dispute resolution provisions of the WTO, as described in detail below.

Additionally, the WTO would establish numerous standing committees that could initiate ongoing negotiations. Under GATT, additional negotiations could be initi-

⁵⁹ United States—Measures Affecting Alcoholic and Malt Beverages, paragraph 5.52 (1992) ("Beer II").

⁶⁰ Center for Policy Alternatives, GATT Impact on State Law: California, September 1994. (Robert Stumberg, et al. Harrison Institute for Public Law, Georgetown University Law Center).

⁶¹ *Id.* at 1.

ated only by consensus of the parties, or alternatively countries that did not wish to be bound by new negotiations could opt out.

1. *Countries Must Ensure Conformity of Laws With the WTO*

The WTO text provides that:

"Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."⁶²

This language requires a significantly stronger commitment from each country to conform to the trade rules underlying the WTO than was contained in the 1991 draft text for the Uruguay Round. Under this language, a country's obligation is to ensure the conformity of its laws with the substantive provisions of the Uruguay Round agreements.

The 1991 draft required that countries "shall endeavor to take all necessary steps, where changes to domestic laws will be required to implement the provisions of the agreements annexed hereto, to ensure the conformity of their laws with these Agreements."⁶³ Thus, under the draft text, countries' obligations were to endeavor to take the necessary steps. Even under this weaker legal formula, the Congressional Research Service concluded in an analysis of the 1991 "Dunkel" Draft GATT text that: a "party would no longer have control over whether or not it must change that particular policy or law [a successfully challenged law or policy] to conform with the GATT."⁶⁴

2. *The Principles of the WTO Do Not Include Environmental, Health, or Labor Rights*

The binding provisions setting out the WTO's functions and scope do not incorporate any environmental, health, or labor rights considerations. In fact, the only reference to the environment is in the rhetoric of the preamble to the WTO, which does not have the binding legal effect on the substantive provisions of the agreement. Labor rights is not mentioned in the preamble at all. Thus, the WTO text would establish a powerful new international institution whose mandate looks backwards to an era when environmental and other citizen considerations were not taken into account.

Moreover, there is nothing in the institutional principles of the WTO to inject any procedural safeguards of openness, accountability or citizen participation into the governance of this body or its functions. The WTO has no structural capacity for nongovernmental organizations or citizens to have any role in the functions of the WTO.

3. *WTO Dispute Resolution: Stronger Enforcement of Bad Rules*

As with the GATT, the WTO dispute resolution allows a member nation to challenge the domestic laws of another member as a barrier to trade. Such challenges are decided in secret by panels of three trade experts chosen from a predetermined roster. (Disputing countries may opt for five person panels.)

The required qualifications for such panelists, for instance experience in a country's trade delegation or experience as a trade lawyer bringing a trade dispute, will result in panelists with a uniformly pro-trade perspective.⁶⁵ In fact, with the exception of panelists qualified by merit of academic expertise in trade, the qualifications will result in panelists with a direct stake in the existing trade system. Moreover, there are no conflict of interest rules for those who would be empowered to sit on these tribunals reviewing U.S. law. By merit of the roster system, what is clear is that panelists will be chosen from amongst trade experts conducting other careers in the trade area, as compared to the U.S. judicial system with judges serving full time as judges and thus insulated from conflict with other professional responsibilities. The unfairness that would be caused by the lack of conflict of interest rules for GATT tribunals is no longer speculative. The United States government recently lodged a complaint about conflict of interest when it became known that panelists judging a U.S.-Canadian dispute over soft wood lumber on a similar dispute panel provided for in the U.S.-Canada Free Trade Agreements were Canadian attorneys representing Canadian lumber interests. That case has resulted in a challenge of the constitutionality of the U.S.-Canada dispute resolution system in U.S. federal court.

⁶² Agreement Establishing the WTO, Article XVI-4.

⁶³ Agreement Establishing the Multilateral Trade Organization, Article XVI-4 (1991.)

⁶⁴ CRS Legal Memo on Domestic Law Effects of the Dunkel Text's WTO Provisions requested by Representative Jill Long, April 1992.

⁶⁵ Dispute Settlement Understanding at 8.1.

As well, under the Uruguay Round proposal, there is no mechanism to guarantee that such panelists even will be exposed to alternative perspectives on environmental or health issues. This is the case because here is no allowance for amicus briefs from interested non-governmental groups or other guaranteed means of access for alternative viewpoints. In fact, the panel is not even required to get technical or scientific help. The text merely allows panels to do so at their choosing. Finally, the text specifically forbids identification of which panelists supported which positions and conclusions in the case. This additional layer of secrecy adds to the lack of accountability of the WTO decision-makers who will be given significant new power.⁶⁶

Under current GATT rules, decisions put forward by the three person panels must be approved by consensus. Thus, each country maintains the right—though politically difficult to exercise—of blocking consensus and thus adoption and implementation of a panel decision. The U.S. used this “emergency break” to freeze adoption and implementation of a GATT ruling against provision of the U.S. Marine Mammal Protection Act which was successfully challenged as an illegal trade barrier by Mexico in 1991.

The new WTO dispute resolution rules take away this emergency break. Under the new rules, the decisions of the three-person review panels are automatically adopted 60 days after completion, unless there is a consensus among all WTO Members to reject the ruling, or the losing country files an appeal.⁶⁷ Thus, over 100 countries, including the country that has won the panel decision, must agree to stop its adoption. This notion of requiring consensus to stop action at an international body is totally alien to the operations of the many international organizations to which the United States is a member. In fact, most international organizations require decision-making by consensus to go forward as a means to protect each countries' sovereignty.

Under the new rules, an appeal can be filed within 60 days after a panel has ruled.⁶⁸ Appeals are limited to issues of law covered in the panel report and legal interpretations developed by the panel.⁶⁹ Appeals must be decided within 90 days, after which that decision would also be automatically adopted unless unanimously rejected within 30 days of its issuance.⁷⁰ There is absolutely no outside appeal to a non-World Trade Organization court or panel provided. Thus, once a panel has ruled the United States could not ask for a review at the World Court much less in the U.S. court system.

When a panel decides that a domestic law does not meet the requirements of the trade rules, its report is required to include the “recommendation” that the offending country change its law to conform with the trade rules.⁷¹ Thirty days after the report is adopted, the offending country must inform the other countries of its intentions with respect to implementing the panel report.⁷² Countries are supposed to change their laws immediately. If that is impracticable, the countries in the dispute can negotiate or submit to arbitration to determine a “reasonable time period.” The text suggests that arbitrators should be guided by a 15 month limit on what is a reasonable period to change the offending law.⁷³

If a country fails to change its law within the set time period, the winning country can request negotiations to discuss the matter. However, 20 days after the time period has expired, the winning country can request permission to “suspend the application * * * of concessions or other obligations,” meaning put in place trade sanctions against the country that has refused to change its law.⁷⁴ Such a request is automatically granted 30 days after the expiration of the set time period, unless there is unanimous consensus of all WTO Members to reject the request.⁷⁵

The dispute resolution text states that such trade measures—or compensation by the losing country—are to be temporary measures when successfully challenged laws are not changed within the set time period.⁷⁶ Where the “* * * recommendations to bring a measure into conformity with the covered agreements have not been

⁶⁶ Id. at 17.11 and 14.11.

⁶⁷ Id. at 16.4.

⁶⁸ Id. at 17.

⁶⁹ Id. at 17.6.

⁷⁰ Id. at 17.14. “An appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt * * *” (DSB refers to the WTO Members meeting as the Dispute Settlement Body.)

⁷¹ Id. at 19.1.

⁷² Id. at 21.3.

⁷³ Id. at 21.3(c).

⁷⁴ Id. at 22.2.

⁷⁵ Id. at 22.6.

⁷⁶ Id. at 22.1 and at 22.8.

implemented," the WTO's Dispute Resolution Body "shall continue to keep under surveillance the implementation of adopted recommendations or ruling * * *" including cases where there are continuing sanctions or compensation.⁷⁷

Sanctions should initially be considered against parallel sectors. For instance, a country that refuses to change a food-related law should be given sanctions in food trade. However, under the WTO dispute resolution, countries may put up sanctions against any unrelated sector if parallel sanctions are "not practicable or effective."⁷⁸ The ability to use "cross sectoral" sanctions considerably increases a country's ability to cause economic pain and pressure on another country that refuses to change its laws by choosing sanctions in especially sensitive or important areas. The "level" of sanctions—the monetary value of them—is to be equal to the winning party's economic damage.⁷⁹ Countries are allowed to challenge the amount of sanctions. Such challenges are submitted to binding arbitration, preferably by the panel that decided the case.⁸⁰ Countries are required to accept the arbitral decision as final; a second arbitration is not allowed.⁸¹

4. Challenges Allowed Against Laws that Do Not Specifically Violate Trade Rules

The WTO allows trade challenges of a domestic law that conflicts with any of the WTO's substantive trade rules. However, it also allows challenges of some domestic laws that another country considers are "nullifying or impairing" any direct or indirect benefit that it expects from the specific trade rules even if there is no violation of a specific rule.⁸² Similarly, a law can be challenged if "the attainment of any objective [of that Agreement] is being impeded" by that law."⁸³ The vagueness of this provision is alarming in that it could be interpreted to include laws and policies that would seem to be free from trade disciplines. As well, this provision would allow trade challenges of U.S. laws under provisions of the Uruguay Round text that are not mandatory, but rather state what a country should (rather than shall) or may (rather than must) do to meet its GATT obligations. In the SPS and TBT text, there are several such provisions which could give rise to a nullification and impairment challenge.

Such challenges of U.S. food laws are no longer speculative. Under the U.S.-Canada Free Trade Agreement, Canada won on a nullification and impairment claim on a challenge that Puerto Rico's strengthening of its milk safety rules to meet U.S. federal standards violated the U.S. obligations under that agreement. While the tribunal in that case ruled that the specific binding provisions relating to food inspection had not been violated by the United States, it also concluded that Canada's reasonable expectations under the agreement had been violated by the ban on Canadian milk that did not meet the new standard.

5. Dispute Resolution: Secretive & Inaccessible to Citizens

The secrecy of GATT dispute resolution is largely perpetuated in WTO dispute resolution. All panel proceedings are conducted in secret.⁸⁴ Unlike complaints, briefs and affidavits in the U.S. court system, documents presented to the panel are kept confidential.⁸⁵ The extent of the secrecy is emphasized by what is being labeled an important improvement in openness: The WTO text allows countries to request a "non-confidential summary" of the information contained in official submissions that could be disclosed to the public.⁸⁶ This requirement is not an adequate substitute for disclosure of the submissions themselves, because the contents of the summaries need not fully disclose all of the evidence and arguments of the actual submissions. Interestingly, the WTO dispute resolution text specifically states that each country may release its own documents if it so chooses.⁸⁷ There is no right for public comment or participation.

⁷⁷ Id. at 22.8.

⁷⁸ Id. at 22.3(c).

⁷⁹ Id. at 22.4. C.

⁸⁰ Id. at 22.6.

⁸¹ Id. at 22.7.

⁸² Id. at 26.1.

⁸³ Id. at 26.1.

⁸⁴ DS Understanding, Appendix 3, Working Procedures at 2. "The panel will meet in closed session."

⁸⁵ Id. at 3 for regular panel reports. DS Understanding at 18.2 for Appellate Reports.

⁸⁶ Id. at 3.

⁸⁷ During the Bush Administration, Public Citizen successfully litigated a Freedom of Information case after being denied access to U.S. documents filed in GATT dispute resolution cases. The Bush Administration had argued that GATT rules required such documents be kept confidential, although the existing GATT is silent on the matter. The D.C. District Court found otherwise.

The degree of secrecy in the Uruguay Round text prompted an unusual action by 30 newspaper publishers and heads of journalistic societies headed by the Freedom Forum who wrote President Clinton in August criticizing the GATT secrecy. Under GATT rules, U.S. reporters, as well as other citizens, cannot obtain access to dispute resolution briefs or other documents much less tribunal hearings.

This secrecy flies in the face of the U.S. standards of openness and disclosure by which the Congress and courts are required to operate. Citizen advocates have fought hard to establish procedural safeguards in policy-making that guarantee citizen oversight through public hearings and access to documents and accountability of decision-makers through conflict of interest laws and elections.

III. CONCLUSION

The implications of approval of this new international institution, the WTO, are far reaching, and from a citizens' perspective extremely worrisome. It is inevitable that different policy goals will at times conflict, for instance goals of maximizing trade and goals of public health and environmental protection. However, the decision about which policy goal should take precedence in a particular instance should be decided by those who will live with the results. Under the Uruguay Round, those decisions are largely shifted away from citizen control and domestic democratic bodies to a negotiating committees and a dispute resolution body located in Geneva, Switzerland which operates in secret and without the guarantees of due process and citizen participation found in domestic legislatures and courts. Moreover the WTO's substantive trade rules that would be interpreted by the dispute resolution body place trade expansion over other policy goals in almost every instance.

The congressional decision about whether or not the United States should join the World Trade Organization is as much as political and legal decision as an economic decision. The decision on the Uruguay Round and its World Trade Organization will directly affect the future ability of the Congress and other legislative bodies around the world to implement policies to regulate commercial activity to guarantee their inhabitants' well being and health.

Around the world, environmental, consumer and other citizens groups are urging their legislatures to reject the GATT Uruguay Round. Unlike many of these nations whose parliaments constitutionally have a lesser role in deciding on GATT, the U.S. Congress has the real ability to determine whether the United States will approve this GATT. Thus, we urge Congress to take a leadership role in sending the U.S. negotiators back to the table. What we need is a trade agreement that both furthers U.S. commercial interests, which previous witnesses at these hearings have also suggested this proposal fails to do, and guarantees the ability of countries to maintain and in the future establish consumer and environmental policies to safeguard their citizens.

The CHAIRMAN. Well, that is exactly what we wonder, some of us here, why we would want, or otherwise how can we delegate that constitutional authority, that constitutional responsibility under article I, section 8, Mr. Brinza, that the Congress shall regulate foreign commerce. Now, you heard Ms. Wallach, and I wanted your comment about it. She said as of the moment GATT, the Tokyo Round that we now have, is a business contract. But this is going to be developed, rather than a business contract, to a more or less a treaty binding a nation. A little language says you do not have to change your laws, but then it says you have to conform your laws or face sanctions. It appears to me at best that that would have to be a treaty, but you are a good lawyer. Tell us about it.

Mr. BRINZA. Mr. Chairman, a couple of things: One is that I do not believe there is any delegation of authority here, in that sense. The Congress is going to be asked to vote on the implementing legislation that has been submitted, so it would be a congressional action in that case. If, in the future, there were to be a successful challenge against a U.S. measure, and as we have seen in many cases those challenges are not successful to U.S. measures, if there were to be one then the only way the law could be changed would be if Congress were to change that law. Therefore, no WTO panel,

no organization, nobody else can change that law except the Congress. So, there is no delegation there.

Second, with respect to—

The CHAIRMAN. You do not think the agreement to conform your laws is a requirement that you either change or face sanctions?

Mr. BRINZA. Mr. Chairman, we are conforming our laws in the implementing legislation that we have submitted to the Congress, so Congress will be doing the conforming there.

The CHAIRMAN. Well, let us say I will agree with you. Let us say, just for the purpose of argument, ipso facto, we agree we have conformed the laws in the implementing bill perhaps, but then you have got these rulings that come out from the World Trade Organization in findings, and you agree in futuro that you are going to conform your laws to those future findings. Now, I am not required under the Constitution to change anything in the future under that constitutional article I, section 8, but under this particular agreement, then, I have said yes in the future, I shall conform.

Mr. BRINZA. Actually, Mr. Chairman, if we do not conform, we are free not to conform our law. We do face the possibility of sanctions, as you indicated.

The CHAIRMAN. Well, then you face the sanctions.

Mr. BRINZA. But even in the absence of the WTO, even in the absence of the GATT, we would face the possibility of countries taking trade measures. In fact, the WTO constrains the ability of other countries to take trade sanctions against us because they have agreed not to do it except in accordance with this particular procedure which provides these procedural safeguards for the United States, including the formation of these panels and the right to appeal. So, if we did not have the WTO, these countries would be free to withdraw trade privileges they have given to us at any time for any reason.

The CHAIRMAN. Well, Ms. Wallach, do you have a comment?

Ms. WALLACH. Well, it is just the notion of putting the words "procedural safeguard" in the same sentence as WTO panel is alien to me in that the procedures set up for those tribunals in fact provide no due process type protection. There is an appeal to a sitting panel in the World Trade Organization who can review the application of the facts to the GATT law, but there is no outside appeal. You cannot go to the World Court, much less the U.S. courts. The bottom is, in this closed system, unaccountable tribunalists, meeting in secret, get to apply all these laws to U.S. legislation, and there is no conflict of interest, it is totally secret, you cannot get the documents, much less be in the courtroom—"courtroom" is sort of a loose use of that term concerning these tribunals—and then the way you have laid out is exactly the case. There are strict timelines—60 days after those three panelists rule, the opinion is automatically adopted as GATT law unless there is unanimous opposition to stop it.

In all of the international organizations to which the United States is a member, there is nothing like that. Generally, there is unanimous consensus to go forward as a protection for the country's sovereignty. But unanimous consensus to stop the ultimate decision of three people meeting in secret which, after a period not to extend past 15 months in which the United States is to change

their law would result in trade sanctions, does not to me sound like procedural safeguards. It sounds like a very dubious thing to expose one's entire system of laws to.

The CHAIRMAN. Well, Mr. Brinza, as the Special Counsel, do you believe in the veto we have for the United Nations?

Mr. BRINZA. Mr. Chairman, I would say that obviously since we are a member of the United Nations and have worked hard on that veto, yes, but this is a very different situation.

The CHAIRMAN. I believe everybody in the room would agree we ought to have a veto. We could not survive without that veto. Specifically, 83 percent of the makeup of this World Trade Organization of 117 nations, 83 percent have voted against us in the U.N. a majority of the time. So, I would give example after example: Mexico, 79.9, almost 80 percent of the time, Mexico votes against us in the U.N. So, we know the track record of these countries as they feel toward the United States in international tribunals.

Now, if we did not have that veto specifically, you would not have a country Israel. It would have long since been gone. They tried their best to condemn, censor, get rid of, and everything else in the United Nations the country of Israel. We have saved it there. Are we going to be able to save ourselves in the WTO without a veto? Namely, you have got to get everybody, 100 other members, to go along with us, 100 percent of the other members, to save ourselves from these rulings.

Mr. BRINZA. In fact, Mr. Chairman, as previously Ambassador Kantor discussed, the United States maintains a veto in the WTO for all the important decisions. Decisions are taken by consensus. If you are talking about the dispute settlement process—

The CHAIRMAN. You say we do maintain a veto in the WTO?

Mr. BRINZA. Yes, sir.

The CHAIRMAN. Where is that? I do not mean to be testy or questioning, except for the fact I would like to have the reference where we do have a veto in the WTO.

Mr. BRINZA. In the WTO agreement itself, I believe it is article IX, it provides that decisionmaking shall be by consensus except as otherwise provided.

The CHAIRMAN. Yes, but provided however if there is not a consensus it shall be by vote. Read the rest of the sentence. Now, do not play games with me. If I am honestly mistaken, clear me up. That is why I am having the hearing. But article IX says it shall be by consensus, but if you cannot get that consensus then it shall be vote, and with one-country-one-vote; is that not correct?

Mr. BRINZA. Mr. Chairman, as I indicated, where there are key decisions to be made we have incorporated the concept of consensus there or a supermajority voting issues there, as well. As I said, I do not—unfortunately, I am probably not your best person to be discussing the WTO organization here. As I indicated before, I am here to provide information for you on standards.

The CHAIRMAN. All right, very good. I appreciate the attendance here, and you colleagues discipline yourselves. We do not need the clock, I do not think.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. I appreciate the panel's opening statements, and please understand that the

questions I will pose and the statements I make are not to be argumentative or sharp, but there are questions being raised by my constituents and questions that I have about this that I sometimes think can only be answered by maybe some very direct questions. Let me start out, though, with maybe not a direct statement or question, but in my earlier statement I think the panel clearly understood that the 1995 farm bill will be one of the top agenda items next year. As a farm State Senator, I believe that perhaps no other piece of legislation is as important to Nebraska and to agriculture as the upcoming 1995 farm bill. The Clinton administration has made some very strong commitments which some—I emphasize “some”—Nebraska farmers welcome with respect to the GATT agreement and how it will or will not affect the 1995 farm bill. If there is expertise on any of the four panel members that we have this morning, I would appreciate your comments about the 1995 farm bill. Please give me alternative scenarios, if you can, how will U.S. farm policy be affected if the GATT agreement passes, and how will it be affected if the GATT agreement fails?

To start out the questions, let me begin, if I could, with you, Mr. Silbergeld. In your opinion, would you and your organization have come here today in support of the GATT agreement if that agreement stood as it did before the advent of the Clinton-Kantor administration, and at least some of the refinements that have been worked out since Clinton-Kantor?

Mr. SILBERGELD. We support the agreement based upon the general conclusion that the agreement is going to increase consumers' access to products in the marketplace at more competitive prices, and I do not believe that the question of which administration has negotiated final agreement or the specific implementing provisions—

Senator EXON. Do I understand your answer is that it is your opinion that you and your organization would have been here supporting GATT had we not had the refinements, if any, that have been made since the Clinton-Kantor administration?

Mr. SILBERGELD. Based on the December 15 agreement, yes, we would be here, without respect to the specific details I believe you are referring to, and the implementing agreement. The importance to consumers of, with all due respect, reducing the effects of Government determination of prices of goods in the agricultural sector we see on the whole as a benefit to consumers, and while we understand that there will be some winners and some losers, not only do we conclude that, as a whole, prices of food for most consumers will become more competitive, but also that the agreement, as a whole, provides a net benefit, despite the pluses and minuses, and it is on that overall judgment that we have determined to support the agreement.

Senator EXON. Is it fair for me to conclude, then, that the basic premise of your support of the agreement is the old cry that I referred to previously as the old chirp, chirp, chirp, that cheap, cheap, cheap is best for the consumer?

Mr. SILBERGELD. Well, Senator, I would characterize it as the belief that greater competition with respect to the entire range of products and services that consumers consume in their daily lives is the best determinant of the availability of goods and the price

of goods in the marketplace. And no, it is not just cheap. We are very concerned about the standards provisions with respect to quality. We, as my prepared statement indicates, have examined the standards provisions very carefully because we are concerned about quality. We believe that the standards provisions allow us to maintain standards that assure quality.

Now, I know that there are many other social issues that you are concerned about, the committee is concerned about, that other witnesses have addressed. In my concern with those issues, I will bow, and Consumers Union will bow, to no one. We share those concerns. The problem is loading all of those many concerns about what society and what the economy should look like onto what is basically a trade agreement. When trade agreements become the vehicle for deciding many of these social and economic issues about the shape of the economy and the rules of social conduct among and within nations, and you put all of those issues on the table and begin to negotiate those with about 120 countries, in our view those issues are too important to leave to trade officials. What you will come out of that negotiation with is the lowest common denominator with respect to most of those issues, because just the huge number of issues and in the public's eye the confusion and the impenetrability of understanding a negotiation with literally hundreds of social and economic and industrial policies issues on the table, makes it impossible for the public to focus on particular issues of their own interest, or of some general sense of equity about particular issues such as the child labor issue, for instance, that Dr. Blackwelder raised.

And when you do not focus, when those are all in some huge stew pot, you do not focus on it, and it is our view that you will come out with the lowest common denominator, if you can even reach an agreement, as the trading between 120 negotiators or negotiating interests goes on.

Those issues need to be settled with separate agreements for key issues or agreements that address particular issue areas, and that the rules of the GATT and the WTO need to recognize that when there is broad social agreement, broad international agreement, on a particular issue or a particular set of issues, then those rules need to recognize that trade sanctions put into those separate international agreements should be recognized by the GATT.

I would note, for instance, the Montreal Protocols, in which a particular very serious international environmental issue was addressed, negotiated and addressed by the agreement, trade sanctions were put into it, and although—although—a recent annual report of the GATT noted its concern, a political statement, about the trade sanctions in the provision, no member has challenged those trade sanctions through the GATT process.

I believe that the GATT should affirmatively recognize and write into it, and the WTO should write into its rules, the recognition of trade sanctions under some set of standards, and I cannot tell you exactly what I think those should be at the moment, respecting international agreements.

But I do believe that international agreement focusing on particular social issues and not loading all of these into some large

stew that trade negotiators settle, is the way to achieve correction of those social and economic problems.

Senator EXON. Mr. Chairman, I would simply point out what seems to be somewhat of a difference of opinion here between the two supporters of the panel that are supporting the GATT agreement. Mr. Silbergeld indicates that prices will go down, at least in agriculture. The U.S. Trade Representative, that I think probably Mr. Brinza would verify, says that commodity prices will go up, therefore leading to lower deficiency payments. I suppose the answer to that is that there are going to be different sectors of the economy that are going to be differently affected. Do you agree, Mr. Silbergeld, that the commodity prices will go up on the agriculture?

Mr. SILBERGELD. On supported commodities, yes. On supported commodities, some prices will go up. Indeed, for some consumers in net food importing countries, they will go up substantially as government price supports go down, and there is an agreement of the ministers to monitor and to look at that problem and to address it. However, the consumer pays for everything out of the family budget, not solely for some particular isolated set of goods, and we believe that, overall, there will be a benefit to the household budget and that consumers will have overall lower prices and wider choice, and that the effect of competition is some of these trade barriers go down.

Senator EXON. It sounds like a happy, happy arrangement for everyone. I would simply point out, though—

Mr. SILBERGELD. No, it is not, Senator. There are winners and losers in the sectors that produce these goods.

Senator EXON. But you were saying that food prices will go up, in your opinion, under the GATT agreement?

Mr. SILBERGELD. Some prices will go up, some prices will go down.

Senator EXON. In food?

Mr. SILBERGELD. In food.

Senator EXON. And then the net effect to the important part of a family budget, which is food, a very basic commodity, will go up or down, or will it remain the same? The total, I mean what it costs to feed the mom and dad and the two kids.

Mr. SILBERGELD. Well again, that may even depend upon the particular family food choices. Prices as a whole for food may go up some. Prices for all commodities should be more competitive. And I am sorry, I am using the word commodities in the sense that I realize may refer particularly to agricultural products. All household goods should go down, and the family budget is not, although we can parcel it that way—what you take home, your paycheck, is not parceled out into food and clothing and household goods and transportation and such, it is a paycheck. And as all of these prices pursue the directions that are set by the removal of price supports and trade restrictions, the family budget as a whole, the household income as a whole, will buy more.

Senator EXON. Well, can any of the other members of the panel try and clarify this for me? I would simply say that if we are talking on one hand about household good prices going down and food prices going up as a result of GATT, I would say that the average household, median household, in the United States of America

spends far, far more of their weekly paycheck on food than they do on household goods. I guess what I am trying to do is to get to the bottom of what I have are some unanswered questions in this regard. Can any of the panel give me any help at all on the general question that I asked about whether or not the GATT agreement will have an effect on the farm bill that we are going to be writing next year?

Mr. BLACKWELDER. I would like to respond on behalf of Friends of the Earth. We think the entire structure of the GATT program is to hurt family farmers, not only in the United States but around the world. We have a serious problem in losing, over time, family farm operations. This treaty continues and accelerates that pressure because the real winners are those who can control the export operations, and you are forcing every single family farmer, not to compete against a local neighbor, but compete against the world. And we have seen over the past several decades internationally what export-oriented agriculture in the Third World has done to local food self-sufficiency. It is our view that food crises are going to get worse, starvation and hunger problems will get worse, as a result of the GATT operation and what it will do, because there is no doubt industrial agriculture is very, very efficient, but if it is put into developing countries, the people that work now in those rural communities will be superfluous. They simply will not be needed. This is a short-run strategy that is spelling social disaster.

GATT is also filled with bizarre agricultural provisions such as forcing us to take in more dairy products from abroad. This is like carrying coals to Newcastle. It is absurd, and it is going to hurt our dairy farmers. The National Farmers Union has indicated that we inspect now less than 4 percent of the produce coming into the United States, and of that which is inspected, 40 percent fails. Vast amounts will be coming in with—what kind of inspection, with what kind of safeguards—putting incredible pressures on our growers here. So, there will be big winners and big losers, and we think the overall loser is going to be the family farmer.

Senator EXON. Other members of the panel? Yes, Mr. Brinza.

Mr. BRINZA. Thank you, Senator Exon. A couple of things. Again, unfortunately, you do not have the agricultural expert here, you have the standards expert here. But I will give you what I do know about the agricultural area. With respect to your first question about how this is going to affect the 1995 farm bill, as we have indicated elsewhere, the purpose of the Uruguay Round was to bring other countries' subsidy practices under control, and therefore benefit U.S. agriculture. And therefore, this should be beneficial for the 1995 farm bill. As you indicated, projections are that prices will be increasing. That should be beneficial for budgetary constraints on the farm bill and others.

Second, with respect to the effect of the Uruguay Round on prices, we are projecting substantial net increases in farm income in the United States as a result of the Uruguay Round agreement on agriculture. And with an increase in income, that is going to help all farmers, presumably.

I would point out that farmers today are competing against the world. What we are trying to do is make that competition more fair. We are trying to bring down the subsidies that are being used

by the European Community, for example. We are trying to bring down barriers to our exports in other countries, which is the reason for having requirements of expanded market access opportunities for agriculture. We are trying to make it clear that the family farmer and other farmers that are competing out there in the world today will be competing in a more fair situation in the future, and that is the purpose of the Uruguay Round, and that should be beneficial for them.

Senator EXON. My understanding of the Uruguay Round with respect to subsidies was this, and correct me if I am wrong. Let us take an unspecified country in Europe that was subsidizing the production of some agricultural product two or three times larger than we were supporting it with our farm programs in this country.

The idea originally was to eliminate all of that and have free competition. I am as fearful under the Bush and Reagan administrations that we were going to get caught in a situation where we would say, "Look what a good job we did." We reduced in half the subsidies of France, for example, on wheat. Therefore, this is a good agreement. But if wheat was being subsidized two or three times as much as wheat production in the United States, that still is unfair.

Do you believe that that kind of situation which I am convinced was once a part of it has been corrected by the word "refinements" that I used earlier with regard to the changes, if any, that have been made by the Clinton-Kantor portions of the agreement?

Mr. BRINZA. Senator Exon, I think it is fair to say we have begun a process of reform in agriculture that will lead to the result that you are describing in terms of eventually making sure that we have agricultural trade free of distorting subsidies in the future.

We did not get all the way there in this Uruguay Round agreement. We provided for the beginning of it. We recognize that it needs to continue, which is why we provide specifically in the agreement for reentering into negotiations to continue that process of reform of agriculture over the years.

Senator EXON. Well, I hate to cut you off, but I would simply say that does not satisfy this Senator at all, because we have been—it has been brought to our attention by a member of this panel that each nation can set its own standards for protection, or protectionism.

You are telling me that we have not solved the problem, but evidently, to put my words in your mouth, you are saying we have begun to make the correction but we have further to go; is that right?

Mr. BRINZA. We have made substantial progress. This would be significant progress that is beneficial for agriculture in this agreement. We have not gotten all the way there yet, no.

Senator EXON. And you believe the World Trade Organization and this one-man-one-vote, that the chairman is referencing is going to allow us to make further progress in that area?

Mr. BRINZA. Senator, they have allowed us to make progress to date. We have had a lot of difficulty, but we have managed to negotiate a beneficial agreement here. Under negotiations where any

country, of course, would have been free to disagree, we were able to work out agreement there.

With respect to level of protection, by the way, that is the level of protection of human life or health, animal life or health, or safety or the environment. We are not talking about domestic production here. That is a different issue.

Senator EXON. Mr. Chairman, I have taken more than my share of the time. I have further questions I will ask in the second round.

The CHAIRMAN. Very good. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. I would just observe for the panelists that some of the language we hear from the administration and other supporters and opponents is similar to language I have heard in the past.

The last Canadian Free Trade Agreement, which is a smaller but nonetheless similar approach of the same trade philosophy, came before the Congress and I raised significant questions about grain and agricultural issues, and I was told not to worry about that, the few areas that were not yet resolved would be resolved, further negotiations will be achievable.

In fact, let me just mention that I have a letter from the trade Ambassador. I have a letter from the President written to me, written to the chairman of the Ways and Means Committee giving us all of these assurances that, first of all, these things will not happen.

Let me give you an example. The letter specifically says, from the trade Ambassador, that the evidence of good faith between us and Canada will be represented by the notion that neither country will substantially increase its quantity of grain flowing across the border following this treaty. That did not mean anything. It was not worth the paper it was written on.

I have got—in fact, once the treaty was done a lot of Canadian grain came across this border, and I have got letters saying that following the ratification of the treaty there will be instant negotiations dealing with the rail rates and so on.

What I am saying is, this was not worth the paper it was written on. It was a promise never intended to be kept, totally worthless as representations to me and to the Congress.

Now, I did not vote for the U.S.-Canadian Free Trade Agreement because I did not believe for a minute they meant any of that, so I did not vote for it, but let me just say that the very instruments with which we have been fighting unfair grain trade from Canada in recent years, fighting unsuccessfully, I might add, until just these recent months, when the Clinton administration took the first action, the very instruments, which were the only instruments we could use, section 22 and the threat of 301, and so on, are the instruments that are negotiated away in this treaty. Is that not right, Mr. Brinza?

Mr. BRINZA. Senator Dorgan, section 301 is not being negotiated away in this agreement. As you may be aware, section 301 currently exists with respect to addressing other countries' unfair trade practices. It will continue to be on the books and continue to be available to address their unfair trade practices.

There have been changes in the scope of the agreement in the Uruguay Round, which has an impact on how you go after those trade practices, but section 301 remains to be available.

With respect to section 22, as you know, we in fact have now imposed section 22 fees on imports of wheat as a result of a section 22 investigation with respect to the ITC, and we have also reached a memorandum of understanding with Canada with respect to that, so those will be in place.

Senator DORGAN. But as an example, section 22 would be unavailable if we go ahead and pass this GATT agreement; is that not correct?

Mr. BRINZA. That is correct. In the future, for products of WTO members, section 22 will not be available. It remains in place for products of non-WTO members.

Senator DORGAN. So, the very instrument that it took us 4 or 5 years to finally get somebody to agree to use, the very instrument that persuaded Canada to come to the table, which was the threat of section 22, we have negotiated away that threat in GATT.

Mr. BRINZA. In cases where we had section 22 in place, we have replaced those section 22 restrictions with tariff rate quotas, or tariff equivalents.

Senator DORGAN. I only say all of this to tell you why some of us feel betrayed by those who negotiate trade agreements and come to us and represent them as some massive cure-all for the American economy and something that is wonderful for American producers, and then we discover after the product is enacted by Congress that it does not mean what it says at all, and those who negotiated it have no intention of following through on other kinds of assurances given to Congress, and I think that is important background for you to understand.

Well, let me go on to ask a couple of questions. Mr. Silbergeld, it is true the administration asserts, and I think others would suggest it is true, that if you reduce tariffs there is some chance that consumers will be able to access less expensive goods.

I say some chance, and I think you could make a pretty good case that the question of at what price a good is sold to the consumer, and at what margin does the producer or the conveyor of that good retain—thinking you could probably have some interesting analysis of that.

But have you, Mr. Silbergeld, done any evaluation of the trade-off between the advantage, the perceived advantage you say exists to consumers and the difficulty that relates when you disconnect where a product is produced from where it is consumed in terms of jobs?

Mr. SILBERGELD. Our own economic studies. No, sir.

Senator DORGAN. So, what do you rely on?

Mr. SILBERGELD. A review of the various reports, the various analyses that have been done which indicate that there should be substantial net advantage to the consumer, and if you would like, Senator, I will send a list of those citations to you.

Senator DORGAN. Do you have any of those in mind? What kind of analysis does a consumer group like yours do? Clearly, you trade off—every consumer in America is also someone who has to consume with a stream of income presumably achieved through a

job—probably investment, more likely a job—and so does one trade off when one evaluates these things, how many jobs are available versus how much advantage exists to a consumer?

Mr. SILBERGELD. Senator, the studies we have seen indicate that while there will be winners and losers, there should be a net increase in jobs.

Senator DORGAN. Which studies?

Mr. SILBERGELD. I will send those citations up for the record. I will be happy to do that.

Senator DORGAN. I understand you would be happy to do that. I wonder if anything comes to mind.

Mr. SILBERGELD. I would prefer not to cite off the top of my head and send the list up. We have it back at the office. We read them. I think we understand the conclusions as to the household benefits. The Department of Commerce has estimates. If I recall the numbers, it is something in the range of approaching \$2,000, a little less, per household per year net economic benefit to the U.S. household. That is an average.

So, yes—no, we do not do our own econometric studies. Yes, we have reviewed the conclusions of the various studies, and I think that they all say that there will be winners and losers. I think they all suggests that there will be, however, a net benefit to the economy, and a net benefit to consumers' households.

Senator DORGAN. I will simply observe for every conclusion you can find an economist that will produce a study demonstrating the conclusion is valid. That is why I am always concerned and interested in what studies does one seem interested in and study.

If I were an international producer, if I were an international economic enterprise, I would be interested in producing where I can produce for a quarter an hour and accessing the cheapest labor on the globe, and selling in the marketplace where the most money exists. That is what I would think my responsibilities would be, and I guarantee you that I could construct a study or have some notable economist construct a study showing me that is good.

Mr. SILBERGELD. Well, I think the committee has held some previous hearings on those issues, and they have been debated. Productivity, transportation costs, many other factors go into the issue of where to locate. Production is not just a matter of wages, and our record in that respect is very strong.

Senator DORGAN. Let us talk just a little bit about child labor. Mr. Blackwelder, you have raised that question, and others as well. Tell me again about your concerns about child labor.

Mr. BLACKWELDER. The concern about child labor goes to the fact that you cannot discriminate against a product based upon how it is made, how it is produced, how it is harvested, only upon the actual content.

So, as I said, if I have these two pens, they look identical, and a chemical analysis would show them to be precisely the same, but you cannot stop one from coming into the United States because it was produced by child labor. You cannot stop one from coming in because it was produced by factories which have destroyed the local fisheries. Those are not permissible under GATT.

I would challenge the U.S. Trade Representative to disagree that we cannot stop products made with child labor and say exactly where we could, because we do not see it.

Senator DORGAN. Mr. Brinza, you are not an expert in this area, but I would like you to comment on it if you would. If that pen that Mr. Blackwelder holds up is made in a factory that employs 12-year-olds working 10½ hours a day, 6 days a week, and sent to this country, and Mr. Silbergeld's consumers access them at an advantaged price; is that fair trade?

Mr. BRINZA. I guess I am not in a very good position to review this at all. Obviously, this administration, as I have heard Ambassador Kantor say, is not in favor of having abuses of labor standards abroad, and we are interested in addressing that area.

Senator DORGAN. That is not addressed in this GATT agreement?

Mr. BRINZA. It certainly is not addressed adequately. I think we have indicated that is some place we would like to continue to work.

Senator DORGAN. And so Mr. Silbergeld says we ought to be able to compete. Mr. Silbergeld, do you think we ought to be able to, and be required to compete against 12-year-olds that make ballpoint pens?

Mr. SILBERGELD. I think that we clearly need international standards that deal with that. It is not in this GATT agreement. I think that there needs to be international child labor agreement. I think that it needs to have trade sanctions in it—it obviously would not work without them—and I think the WTO needs to recognize those.

I would only note that the administration was unsuccessful in trying to get a fast track renewal that permitted it to start some of these things, and I would hope that it would be able to find a way to do that.

Senator DORGAN. But then, do we not have the cart before the horse here? When I am talking about 12-year-olds making ballpoint pens, I am talking about kids, some estimate 200 to 250 million kids in the world working in sweatshop conditions for a dime or a quarter or 50 cents an hour.

Do we not have the cart before the horse, if we said, let us have an agreement that opens markets and accesses these cheap goods into our market, if we do not have assurance that those goods are not being produced by kids in those conditions? Maybe I could ask Ms. Wallach to respond to that.

Ms. WALLACH. Well, Senator Dorgan, it is actually even one step worse than the statement you just made, which I agree with. This text does not include anything that would limit that kind of trade or set some minimum standard for getting access to our lucrative market, but what is even worse, there are provisions, as Dr. Blackwelder has suggested correctly, that would, in fact, prohibit the United States from having a domestic law that would ban imports of child labor goods. In GATT-ese, you cannot distinguish different goods on the basis of how they are made. Child labor does not make a physical good.

Even more telling on the matter of GATT's allowance of child labor is that the original GATT has an exception so that countries are allowed to break other GATT rules to stop the imports of prison

labor. Child labor is not in there—prison labor. There are exceptions where you can break the rules, some national security reasons, some situations like prison labor. Child labor is not in there.

Rather, what there is, is a record of GATT tribunal jurisprudence interpreting the GATT rules to mean that one cannot distinguish between physically similar products so that, for instance, the Harkin-Kennedy child labor bill that was the basis of a huge labor conference and hearings just 3 weeks ago, its core provisions would violate the requirements under GATT. And these rules would be more strongly enforced under the World Trade Organization. There are CRS legal memos about how the Harkin bill—a nondiscriminatory measure—would violate GATT.

Senator DORGAN. You see, that is at its root, it seems to me, the problem with this approach. This whole approach is part and parcel to the British disease which we apparently want some of, rather than want to avoid. It is a misreading of Adam Smith, and Ricardo. It is misreading of what it all meant when they wrote, "we did not have corporations, only nations."

Comparative advantage has never meant that political advantage. When the politics of one country says, we will not address human rights issues, we do not care about labor standards, we do not care how much people are paid, that is not a comparative advantage, that is a political advantage that some country for its own particular political agenda has decided that it wants to pursue.

We do not care about workers, we do not care about this, that, and the other thing, and the misreading of Adam Smith and Ricardo and the developing chant of free trade, which I think moves us again toward the British disease of caring more about consumption than production, of moving jobs offshore, of weakening slowly, inevitably your economic base is something that gives me real heartache. We have not had a very thoughtful discussion on trade policy.

It was interesting last week—I forget who the witness was, but it took the witness just a nanosecond to jump from that position to the position of saying, "those who oppose this agreement by and large want to put a protective wall around America and do not want America to compete."

What thoughtless, total nonsense. I do not know if anyone in this room who opposes GATT or supports GATT, I do not know of anyone who believes we ought to put a wall around our country, but I know a lot of people, myself included, think there ought to be some basic responsibilities for accessing our marketplace.

What are those responsibilities? Very simple. It is responding to the same kinds of things we have responded to as a nation for many, many years, about the rights of people and the right to work in a safe workplace, the right for children to be free from having to go to work 10 hours a day when you are 12 years old. I mean, the whole series of things that we fought for and we have worked for for so many years, and they are so blithely ignored in these trade agreements that I think represent more an economic agenda by the largest economic interests who want to produce work cheap and sell into established marketplaces.

That might be fine for them. It might be fine for their profits, but it is not fine in my judgment for the long-term economic health

of our country. It is not fine for our productive job base, which, after all, is the best measurement of long-term economic health. Not consumption, production and job base, that is the barometer of our country's long-term economic health.

The panel has provided, I think, some very good information, and Mr. Blackwelder, you wanted to comment.

Mr. BLACKWELDER. I was going to say we absolutely agree with you. This is putting the cart before the horse. Friends of the Earth, as I said, are part of an international organization. We are not protectionists. But what is happening here with these agreements is that they are creating big winners and losers. Sustainable trade, a concept we like, has winners on both sides. That is the original concept.

But what now we have is big winners and losers so that you are polarizing the difference between rich and poor in the United States and you are doing the same thing around the world. It is not just that we are hurting people in the United States with the child labor here as it undermines our job base, but we are destroying the hope of developing countries for improvements in their standards. And so that point also ought to be made.

Senator DORGAN. Well, I know my colleagues have questions to ask, as well. Let me ask one final question of Ms. Wallach. You have, I am sure, read virtually all of the analyses that exist of these trade agreements. As I indicated to Mr. Silbergeld, there are a multitude of studies by virtually every segment on this issue, and many of them reaching different conclusions. Can you summarize for me your evaluations of the good work that has been done, by study if you can, the work that has been done on this issue of standards and WTO and sovereignty?

Ms. WALLACH. Yes. There have been a series of reports that actually analyze the provisions of the agreement and apply them to U.S. law.

A very instructive document, though it is not an analysis from the consumer or environmental perspective, is the European Union's report on trade barriers. What is different in this report, which is a regular annual report as Mr. Silbergeld mentions, is it specifically takes the Uruguay Round provisions and applies them to U.S. law. It lays out some of the basis for why our food labeling laws and our pesticide laws and our food inspection laws and numerous environmental laws, from the European Union's perspective, would be now available for successful trade challenge and elimination under the World Trade Organization's rules.

There was a study done in April of this year by the Environmental Working Group done with Public Citizen. Environmental Working Group is a group of scientists. The study is an 80-page extensive study of the food safety rules from a legal perspective with pages of footnotes and citations to actual GATT cases and government studies authored by the lawyer he has conducted the Supreme Court litigation on NAFTA and GATT. What is especially interesting about this study is original scientific work that shows, in fact for the first time because the Government has not done this, how the U.S. pesticide standards are more protective of health than the international standards. The science is compared point by point

and lists what the increased cancer risks would be if we adopted the CODEX standards.

As well, there are several excellent international reports. A group called Parents for Safe Food in the U.K. has done a book that takes an international perspective on how GATT standards would undermine food safety laws by pushing down the best laws in each country. They look at all of the European countries and the United States.

There is a series of studies by World Wildlife's Geneva-based branch on the GATT provisions' detriment to environmental and consumer health protection I recommend highly as careful and well documented. And then there is a good report by a group called the Safe Alliance—that is a British group also—that goes through the CODEX Alimentarius and lists all the members of committees who are making the decisions that would become the international food laws under GATT. The report finds that it is largely the biggest of food and chemical companies who are sitting making these laws that make them happy but would make us sick.

There are some other excellent studies. The Sierra Club commissioned a law professor from George Washington University who looked through all 50 U.S. States and found which State laws would be conflicted. Numerous organizations including the pro-NAFTA environmental groups such as Natural Resources Defense Council, National Wildlife Federation, have all done their own analyses and presented them in opposition to GATT to the Congress. So, that is a summary of it, and I could certainly submit that in writing.

Senator DORGAN. If you could submit that summary for the record, I would appreciate that.

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Senator DORGAN. I appreciate the indulgence of my colleagues. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Pressler.

Senator PRESSLER. Thank you very much. I would like to follow up. I find it fascinating that the environmental groups are opposing GATT in the sense that, generally speaking, one thinks that the environmental groups are for these international treaties, be it a diversity treaty or some of these others. If you were to boil it down to a nutshell, Mr. Blackwelder, what is the key reason that Friends of the Earth is opposed to this treaty? Now, I know that you have given an opening statement, but it seems to me that our laws, generally speaking, on the environment front have a higher level of stringency or standards. Does this mean that you are afraid that ours will be lowered? Of course, these are not necessarily environmental, but the FDA's rule establishing tolerance for lead contamination of wine in ceramic ware or California's more stringent lead tolerance for wine, the Delaney clause banning cancer-causing additives in food, The Nutritional Label and Education Act, and so forth, would not this require the other countries to actually adopt higher environmental standards, so would not the whole boat be raised up?

Mr. BLACKWELDER. No, the basic reason why Friends of the Earth and other national environmental organizations are opposed to GATT is that we think it is a downward harmonization, not an upward harmonization. It is a barrier to innovation. I will introduce, if I could, Mr. Chairman, for the record a series of quotes from all the national environmental organizations about their reasons for opposition.

The CHAIRMAN. It will be included.

[The information referred to follows:]

FRIENDS OF THE EARTH'S RESPONSE TO GATT'S DISPUTE PANEL RULING ON CAFE STANDARDS AND GAS GUZZLER TAX

Friends of the Earth views the long awaited GATT panel decision on the United State's CAFE Standards and the Gas Guzzler Tax as a positive step forward in establishing jurisprudence in the GAG that recognizes legitimate use of environmental measures and regulations, although the case still raises potential problems and conflicts between GATT rules and environmental laws. The decision does demonstrate

how more public scrutiny of a traditionally closed institution has helped advance the integration of two previously distinct policy areas: international trade and environmental protection.

The case, brought forward by the European Union, challenged three U.S. laws, two of them environmental laws. The Gas Guzzler Tax and the Corporate Average Fuel Economy Standards (CAFE) both promote more fuel efficiency in automobiles by penalizing manufacturers that do not reach a certain gas mileage standard. Both laws have contributed to the doubling of fuel efficiency of the U.S. automobile fleet since 1978, which saves the United States 2.5 million barrels of oil per day.

The GATT Panel found that the Gas Guzzler Tax, which requires a tax to be applied to any passenger vehicle that does not meet 22.5 miles per gallon gasoline mileage, was not applied in a way that favored domestic producers over foreign automobile manufacturers, nor was the standard of 22.5 miles per gallon arbitrarily set benefit U.S. automobiles since when it was introduced, certain domestic automobiles did not meet the standard and many foreign automobiles meet it today. As expected, the panel ruled that the entire law is consistent with global trade rules.

In the Panel's decision on CAFE, a regulation that sets an average standard of 27.5 miles per gallon for automobile fleets, it supported the use of CAFE as an environmental measure to increase fuel economy and energy conservation, but criticized the way it is applied to foreign automobile fleets, which requires separate foreign fleet accounting, saying that it was discriminatory. What the GATT rules do not recognize are the difficulties in the political process to establish laws and that while the final result may not be an ideal measure, it may be the only politically feasible measure at the time.

The panel did find that the CAFE regulation would be justified under Article XX(g) of GATT, which allows for an exception to agreed to GATT rules if the applied measure is related to the "conservation of exhaustible resources". Since this measure is aimed at conserve energy, or gasoline, it was viewed as a legitimate exception to GATT's rules. This was the first time this exception was applied for environmental reasons.

While the general exception for conservation measures helped to buttress support for certain parts of this law, this exception is the only one that does not require that the measure be "necessary". The panel reconfirmed that for all other exceptions for the protection of animal or plant life and health, the measure must be demonstrated to be necessary, which in the past has meant that it be applied in the least trade restrictive manner possible.

While the panel ruled against a portion of the CAFE standard saying that it was discriminatory, since there is no measurable economic harm that the European Union can demonstrate, no action from the U.S. is required.

This panel decision leaves unanswered many other criticisms that the environmental community has raised about the Uruguay Round of GATT. In particular, the issue of whether or not countries can distinguish between the way a product is produced, as opposed to the final form of the products. The GATT Panel ruling against the Marine Mammal Protection Act raised this problem. That panel ruled that countries cannot discriminate against products that are produced or harvested in an environmentally harmful manners so long as the product itself is "like" other products.

The panel decision, the third to rule on a U.S. environmental law, shows that the GATT rules remain ambiguous. Thus far, we have won on some interpretations and lost on others, most notably the Marine Mammal Protection Act. What is certain is that a clearer policy is needed that will guide trade discussions and provide the fullest information about the impact of trade rules on global environmental protection measures.

EUROPEAN COMMUNITY TARGETS U.S. ENVIRONMENTAL LAWS FOR ELIMINATION AT GATT

In a recent report on "United States Barriers to Trade and Investment" by the European Commission, the European Union (EU) has targeted several U.S. environmental laws as trade barriers and has called for their elimination through the General Agreement on Tariffs and Trade (GATT). The report surveys U.S. legislation "as a means of identifying problems of access to and of operating within U.S. markets". The purpose of the report is to "become * * * a tool for focusing dialog and negotiations * * * on the elimination of the obstacles inhibiting the free flow of trade and investment." Major targets are:

California's Safe Drinking and Water Toxic Enforcement Act (Proposition 65), which requires a warning label on all products containing substances known to cause birth defects or reproductive harm, including lead.

The High Seas Driftnet Fisheries Enforcement Act of 1992, which attempts to curb driftnet fishing, by listing and ultimately banning the import of fishery products from nations that continue the practice.

The Public Resources Code of California, which requires that glass containers used for food and beverages have a minimum percentage of recovered (recycled) glass in their composition.

The Nutrition Labelling and Education Act 1990, which requires the U.S. Food and Drug Administration (FDA) to follow an accelerated timetable in their extensive program to inform consumers by changing food labels.

Zero Tolerance Pesticide Levels for substances which have not been approved for use in the U.S. or for which no import tolerance has been established.

The EU has already filed complaints with the GATT Council seeking changes in some U.S. environmental laws. A ruling will be issued soon on:

Corporate Average Fuel Economy (CAFE) standards, which have doubled the gas mileage performance of the U.S. automotive fleet since 1978.

Gas Guzzler Tax, which taxes inefficient cars that meet less than 22.5 mpg and promotes the sales of efficient cars.

GATT has already declared that some U.S. laws violate GATT. In May, 1994, a dispute settlement panel under the GATT ruled that U.S. embargoes on imports of tuna products under the Marine Mammal Protection Act (MMPA) are inconsistent with U.S. obligations under the GATT. The MMPA promotes the sale of "dolphin safe" tuna to U.S. consumers. This ruling highlights the need to incorporate environmental considerations into GATT.

Unless trade agreements like the GATT incorporate environmental principles and broadens its objectives beyond the free flow of goods, global environmental protection will be at risk.

A summary of the environmental targets of the European Commission report is available from Friends of the Earth.

THE TRADE AND ENVIRONMENT CONNECTION

Wilderness Preservation.—Free trade promotes export-led growth, which too often means the export of natural resources. Developing countries that are in debt are pressured to export more of their raw materials to increase their revenues and service the debt. Attempts to protect natural resources by regulating trade, such as the ban on raw log exports in the Northwest, are contrary to free trade principles which forbid any restrictions on exports and imports.

Energy Conservation.—U.S. laws mandating energy efficiency in automobiles and electrical appliances could be lowered to match international standards under GATT and NAFTA. Government programs that encourage energy conservation and efficiency could be challenged as unfair subsidies. The NAFTA encourages the increased extraction and trade of fossil fuels, coal and nuclear energy, without requiring that conservation and efficiency programs be implemented first, thus favoring non-renewable energy use over conservation and renewable energy.

Air and Water Pollution.—Programs that encourage pollution reduction and provide incentives for industry may be challenged as unfair government subsidies, as was the case under the U.S. Canada Free Trade Agreement. The Canadian government provided incentives for industries to put scrubbers on smoke stacks to reduce acid rain, but U.S. industries argued that this was an unfair subsidy to industry. Furthermore, pollution problems will increase worldwide as investment moves from country to country with lax enforcement of its environmental regulations.

Pesticides and Food Safety.—Both the NAFTA and GATT set out to harmonize pesticide and food safety standards to meet international standards, which are often less stringent than U.S. standards. These agreements may also threaten proposed "circle of poison" trade restrictions, which would prohibit the export of pesticides banned in the U.S. and ban the import of products with residues of banned pesticides. Labeling laws that inform consumers whether a product contains carcinogens, is organic or has been irradiated, may also be threatened.

Toxics and Hazardous Wastes.—U.S. laws that regulate toxic substances can be challenged as a barrier to trade. For example, under the U.S.-Canada Agreement, Canada has already challenged the U.S. Environmental Protection Agency's phase-out of asbestos. Any attempts to reset the import or export of hazardous waste could be construed as impeding trade.

Recycling and Waste Reduction.—Bans on non-recyclable materials or excess packaging could be vulnerable to change. Laws that require the recycling of a product or regulate that type of packaging could also be challenged. Canadian efforts to enact a national bottle recycling policy is currently being opposed by the U.S. gov-

ernment because the five cent tax on glass bottles is seen as discriminating against U.S. beer companies.

Ozone Depletion.—Efforts to use trade measures in international treaties, like the Montreal Protocol, to protect the Earth's ozone layer conflict with the rules of the international trade agreements.

THE TUNA-DOLPHIN CASE AND THE MARINE MAMMAL PROTECTION ACT: GATT RULES AGAINST U.S. ENVIRONMENTAL LAW

SUMMARY

The Netherlands and the European Union (EU) brought a complaint to the GATT to challenge American embargoes on imports of tuna under the Marine Mammal Protection Act (MMPA) which they felt discriminated against their tuna exports to the United States. The MMPA allows the U.S. to block imports of tuna harvested by purse seine nets which kill dolphins. The MMPA also allows the U.S. to block tuna from countries that import dolphin unsafe tuna to process and export, as in the case of the EU.

A dispute resolution panel under the General Agreement on Tariffs and Trade (GATT) met in secret to rule on the complaints filed by the EU and the Netherlands. No input from citizens or environmental groups was allowed. Moreover, there is no assurance that any panelist has any degree of environmental expertise.

The panel ruled against the United States asserting that the MMPA is inconsistent with the GATT free trade rules. This ruling allows the EU and other nations to impose retaliatory sanctions on the U.S. if it does not amend its dolphin law. This opinion is similar to one issued in 1991 in response to a complaint filed against the U.S. by Mexico that ruled then that the MMPA violated GATT.

BACKGROUND

The MMPA was enacted in 1972 to combat purse-seine fishing techniques in the Eastern Tropical Pacific. At that time, fishermen using pods of dolphins to locate tuna killed 400,000 dolphins annually. The MMPA has successfully limited the number of dolphins killed incidentally to 27,500 dolphins per year.

ENVIRONMENTAL IMPLICATIONS

Domestic laws designed to protect local environment and global commons will come under greater scrutiny as countries attempt to comply with the rules outlined under the GATT. Governments world wide will be compelled to avoid enacting legislation to protect the environment or to relax existing regulations if they impede trade. This case sets a dangerous precedent and highlights that the GATT is woefully out of step with environmental and conservation measures.

One of the major implications of this case is the GATT's ruling that countries can only discriminate against "like products", not the way products are produced or harvested. Regardless of the way a product is produced, such as the excessive dolphin mortality, so long as the tuna itself is allegedly safe, it violates GATT rules to block it. The implications for this case are serious. Countries cannot limit goods that are produced in an environmentally or socially harmful manner, such as timber that is clearcut, agricultural products picked by child labor or manufactured goods that use CFC's.

QUOTES ON GATT—HERE IS WHY ALL MAJOR ENVIRONMENTAL GROUPS OPPOSE THE URUGUAY ROUND OF GATT

"We oppose the Uruguay Round agreement because its provisions governing sanitary and phytosanitary measures and technical barriers to trade could provide a basis for successful challenge to U.S. standards for food safety and environmental protection. In this and other respects, we believe the Uruguay Round treaty compares unfavorably with the NAFTA and its supplemental agreements."—*Natural Resources Defense Council*.

"Trade and environmental policies can and should be mutually supportive. The Uruguay Round agreement falls far short of that goal. The Uruguay accord will interfere with national and international efforts to protect the environment, and will create a new international institution—the World Trade Organization (WTO)—with the power to take important decisions behind closed doors and without regard for their environmental effects."—*World Wildlife Fund*.

"The folly of present international trade rules is best exemplified by their failure to allow a country to limit the import of a product based upon how it is made—known in trade parlance as production and process methods (PPMs). So, if American consumers wish to purchase dolphin-safe tuna, captive-bred parrots, recycled paper, or ozone-friendly products, the GATT will rule against them without even the ability of concerned citizens to state their case. This is not free trade, it is a bad bargain."—*Defenders of Wildlife*.

"Close examination of the agreement shows a troubling lack of clarity in provisions relating to environmental standards which might put these standards at risk in dispute settlement proceedings. In addition, the Uruguay Round does little to increase public participation and openness in the dispute resolution process, nor does it improve the treatment of environmental issues under existing GATT articles."—*National Wildlife Federation*.

"The Uruguay Round trade agreement, which will significantly expand world trade, may create major environmental impacts. Unfortunately, environmental issues were not addressed in Uruguay Round negotiations, and no thorough assessment of environmental impacts likely to arise from the Uruguay Round has been undertaken. Before such an assessment is completed, the Environmental and Energy Study Institute will be unable to endorse the Uruguay Round pact."—*Environmental and Energy Study Institute*.

"GATT lacks public participation, environmental expertise, and accountability; GATT threatens domestic and international environmental protection; GATT threatens family farmers and sustainable agriculture around the world; and GATT disregards the protection and conservation of natural resources."—*Greenpeace*.

"There is no strong a priori economic case that trade policy should take precedence over environmental policy, or vice versa. What threatens the world trading system today is not green protectionism. It is ordinary dirty brown protectionism."—*World Resources Institute*.

"Nothing is more likely to pull down our present U.S. consumer and environmental protections and derail further advances than the proposed expansion of a global trade agreement called the Uruguay Round of the General Agreement of Tariffs and Trade (GATT)."—*Public Citizen and The Environmental Working Group*.

"Changes in the GATT negotiated during the so called Uruguay Round are a bad deal for the environment. They are far more threatening to environmental protection than the NAFTA. The Sierra Club, therefore, strongly opposes this trade agreement. Although we are not opposed to expanded trade, economic progress cannot and should not come at the expense of the environment. Ultimately, the health of the world economy depends on strengthening, not weakening, environmental protection."—*Sierra Club*.

"The environmental costs of GATT are clear. The policies it promotes will lead to increased consumption, further degradation of natural resources, and it will allow corporations to operate around the world without any environmental or social obligations."—*Friends of the Earth*.

Mr. BLACKWELDER. Thank you. And together with a list of the laws which are some of the laws that our memberships have worked very hard to pass over the years, which are going to be challenged, we feel, because they are on the list of laws which are targeted for challenge.

This is not hypothetical. We have had three challenges at GATT, and we have lost two of the three. Our Marine Mammal Protection Act has been challenged twice, and the set of auto economy standards, the so-called CAFE standards and the gas guzzler tax, have recently been challenged. So, it is not a hypothetical concern, it is an actual reality. These are the central environmental concerns we should have. Any future trade agreement should lift up and encourage better improvement, not drag it down.

Senator PRESSLER. OK, so in the big picture today, the United States and Europe and Japan probably have very high or satisfactory environmental standards. What you are worried about is in the World Trade Organization, with its 120 members, they will say to country X that does not have any of these standards, you can

go ahead and export your products and everybody will just have to meet your standard. Is that what you are saying?

Mr. BLACKWELDER. No, another concern is that if you are a transnational corporation, you are going to be moving offshore to take advantage of cheap labor, and you will look at areas where there is lax enforcement. There might be an identical law, but if there is no real enforcement, you will go to where there is what could be termed a "pollution haven," and so this is a serious problem right now. It is going to get worse under GATT. It is not just the actual law in itself, but it is the enforcement associated with it.

One study which we did in the case of NAFTA and the maquiladora industries along the border was to show that business which moved to that zone increased their profits 100 percent because they did not have to obey pollution laws.

Senator PRESSLER. Now, did you support or oppose NAFTA.

Mr. BLACKWELDER. We were a group that opposed NAFTA, and we cited that as one of the basic concerns about trade agreements.

Senator PRESSLER. But there were some environmental groups that supported NAFTA; were there not? There seems to be solid opposition from environmental groups to GATT.

Mr. BLACKWELDER. That is correct, and in this statement of quotes that I am submitting for the record you will see pro-NAFTA groups like NRDC are quoted in opposition to GATT.

Senator PRESSLER. Could you give an example of some specific product where U.S. consumers might suddenly have available a matter of lower environmental quality?

Mr. BLACKWELDER. One example would be in the case of pesticides. I think you were suggesting maybe all industrial countries have high standards. We have better standards. We ban pesticides that are used elsewhere in the world. There will be a drawdown, and we will have to take products coming in with these pesticides on them. And that is a disadvantage clearly to our farmers because they do not use these pesticides, but you have growers around the world using them and they come back into the United States.

Senator PRESSLER. So, for example, if DDT were still used, or whatever it is called, in some countries, then under GATT we would have to take in those products even though we do not use DDT here?

Mr. BLACKWELDER. Well, you are oversimplifying it, but basically that idea is correct that our standards and stringencies in this area would not be sufficient to keep out products with those residues on them.

Senator PRESSLER. But could not the argument be used the other way? If we were influential enough in the World Trade Organization we could force them to accept higher standards, so maybe the whole boat would be raised up.

Mr. BLACKWELDER. That is how you could write a trade agreement. We would like to think that in the future trade agreements could be fashioned as an uplifting process so that we improve everybody's living standard and conditions throughout the world. This GATT is not written in such a manner. It is written as a drawdown. It sets up for people to be challenged if they step out of line, for all the reasons that were explained earlier.

Senator PRESSLER. Well now, why is not Consumers Union concerned about these exact same issues? If we are going to have lower environmental standards, like if the fruit is going to be sprayed with DDT, why would not Consumers Union be worried about that?

Mr. SILBERGELD. We would be worried, if that were the case, Senator, and that is why we looked very carefully at the sanitary and phytosanitary agreement, which is the agreement that would govern measures involving pesticide residues on foods, and our conclusion is quite the opposite, that both with respect to the challenges of standards under the dispute settlement procedure and with respect to the harmonization process, and I quote from the agreement: Harmonization should be done "without requiring members to change their appropriate level of protection of human, animal, or plant life, or health." Our standard for the residue of any pesticide is our standard, and we are entitled to enforce it. Any challenge that comes to that, the burden would like on the challenging party to show that we did not base it on science.

Senator PRESSLER. So, in other words, if some fruit came that was sprayed with DDT, we could refuse entry—just deciding that ourselves.

Mr. SILBERGELD. Yes.

Senator PRESSLER. But conversely, if some other country did not want to let our products in, they could, out of the blue, decide that we had sprayed it with product X which they said is not acceptable, so that is a nontariff barrier that could be used by everybody and we would be back to square one.

Mr. SILBERGELD. Except that if their standard were justified by their own scientific determination or their own standard of protection of human, animal, or plant life or health, then they should be permitted to do that. And we would concede that if our standards in particular cases are not as stringent as some other standards, and that is true in some cases, for instance, the Scandinavian countries have stricter standards than we do for a number of pesticide residues, then they should be entitled, just as we are, to protect their citizens from residues at the level of risk that they determine is nationally appropriate. That would not be a hidden barrier to trade if it were based on the protection of human life or health.

The purpose of this agreement is to assure that when we have standards that keep particular food products out, that those standards are for the purpose of protecting human, plant, or animal life or health, and not for the purpose of having a disguised trade barrier.

Senator PRESSLER. Now, let us say that Germany were to bring charges against the U.S. timber industry for damaging old growth forests or just the forest ecosystem. If charges are brought on ecosystem damage, who would determine the value of monetary damages? What guidelines would be used? Would it be based on actual use bases or market value or what?

Mr. BLACKWELDER. Well, I could give a brief answer. You have your GATT panel mechanism at the World Trade Organization that is empowered to determine levels of sanctions and monetary damages. The complaining country would submit estimates, of course.

But I want to come back, though. We have not resolved this question earlier, because this debate on standards is at several levels. One of the points that has to be stressed is that these laws that we have can be challenged if they are not constituted in the least-trade restrictive manner possible. And I just want to quote from article 2.2: "For this purpose, technical regulations shall not be more trade restrictive than necessary." OK? Now, in the United States we set standards based upon social objectives or health objectives. We do not bring in the notion is this the least-trade restrictive way possible to do this. And so you cannot predict in advance. I do not think either one of us can predict how GATT would rule. The fact of the matter is these challenges are being brought, they have been brought, and they are intended to be brought by various countries. And it is not the way we ought to be doing business.

Senator PRESSLER. Let me ask about labeling. Take for instance the standards provisions of NAFTA. Currently, Mexico has established new standards requiring Spanish language labels, warranties, and safety information on all manufactured goods shipped to Mexico. This is causing major headaches for U.S. exporters. This could be a nightmare under the GATT. Do you see this as a problem for a U.S. manufacturer who ships products, say, to 50 countries where all countries have a different language? Could not other countries bar U.S. imports that are not labeled properly?

Mr. BRINZA. Senator Pressler, if I could comment on that one briefly, the question of labeling is something that is addressed by the agreement on technical barriers to trade that we discussed a moment ago. The United States has its own requirements with respect to labeling of imported products.

Senator PRESSLER. The United States has its own what?

Mr. BRINZA. Has its own requirements with respect to the labeling of products imported into the United States, and the agreement recognizes the ability of countries to have those kind of requirements. We have worked with Mexico, in fact, on this labeling issue to try and make sure that it is a requirement that can be applied in a way that reduces the burden on U.S. manufacturers and exporters, and obviously, if there are difficulties with other countries we would try to work with them there, too.

But if I could back up for just a second to your question about the German challenge, I guess I am having difficulty understanding the question only because there is no rule per se in the Uruguay Round with respect to ecosystem damage, nor would there be any monetary fines or penalties available under the dispute settlement mechanism that is set up under the Uruguay Round. It is a question of withdrawal of equivalent trade benefits.

Senator PRESSLER. Well, I guess it would be. What would happen when other countries of the world bring trade sanctions against the United States for damaging the environment? Could they do that under some circumstances?

Mr. BRINZA. There is not a setup like that in the Uruguay Round as such. You would have to show that a particular country's law or regulation or whatever was inconsistent with one of its obligations under the agreement. So, you would have to tie the question, I guess, to one of the particular agreements.

Senator PRESSLER. OK, let me ask one final question.

Mr. BLACKWELDER. Could I insert there? You could potentially conceive of a challenge to U.S. Government subsidies, for example, for below cost timber as actually an impermissible subsidy under GATT and actually challenge that government subsidy, and then ask the United States to stop subsidizing a particular resource-extractive process by the Government. This has been done in the case of the U.S.-Canada dispute. U.S. industries are objecting to Canadian subsidies that are incentives for scrubbers on smokestacks as a way of dealing with acid rain as an impermissible government favor to industry. So, you see, it could be done from, say, European countries on our Government policies on timber or mining.

Senator PRESSLER. If I could just conclude with a general question and an observation, President Clinton is strongly for this treaty, and he ran for the Presidency with the strong support, I think, of the environmental community, and with the strong support of people who support Public Citizen, I think, if I could say so. Is not this a major political split? Have you had some meetings with the White House? Is this not an unusual development?

Ms. WALLACH. We certainly find it disappointing that many of the administration's most progressive environmental and consumer proposals for the future, as well as existing laws on food labeling, on wildlife conservation, on pesticides, on meat inspection that we support, and that the administration supports, would, in fact, be exposed to challenge under the World Trade Organization, and would quite clearly conflict with provisions of this agreement.

While we agree with the administration on those environmental and consumer laws, we strongly disagree that other countries should be armed with a tool to take on those very measures that on the one hand the administration supports, and this would put at risk.

To go back to your question about the DDT, a very practical examination of that is yes, right now it stops at the border. Under this agreement, the test would be, what is the international standard, and where is the U.S. standard in relation?

On fruits and vegetables, it so happens CODEX does not allow DDT any more. They used to, until 1991, have a tolerance for DDT on fruits and vegetables. However, they still do allow it on milk, meat, and dairy products. We have banned DDT here since the 1960's.

So, the examination would be—let us just say that it is milk that the DDT has come in—is the U.S. standard higher than CODEX? For milk we know, yes, it is. CODEX allows DDT in milk; the United States doesn't. Here is how this would all come up as a challenge. The United States would stop the milk containing DDT at the border. That would be the end of the story now.

Under the Uruguay Round, the country whose milk we stopped could take the United States to Geneva and have our domestic milk safety law reviewed by one of these World Trade Organization tribunals. The rule would be, if you are higher than CODEX, which you are now, can your food safety law pass an entire battery of tests? There are three separate tests about what goals your law can meet. They require science, risk assessment, and continuing scientific certainty. The risk assessment itself would be trouble. The

United States banned DDT as part of a policy decision not to add carcinogens to the food supply. It is not a risk assessment of how much DDT cancer risk we will allow.

Then there are means tests. Is that the least-trade restrictive means, assuming the safety goal were allowable? Any U.S. ban is suspect under the least-trade-restrictive test, because the question is, why not label it: "Warning: this milk has DDT"? Let the consumer have a label, less trade impact, the stuff comes in.

In the end, the panel decides what happens to our U.S. law. Every GATT provision has to be satisfied when reviewing our law. We get clobbered in a couple of cases, and it comes back to Congress. Kill the law or face sanctions and more sanctions. What is the decision?

Senator PRESSLER. But I want to pursue this with the environmentalists, because I note that the Friends of the Earth and all the big environmental groups always support the most liberal Members, or candidates for the U.S. Senate. I am not picking on them, but they do, and they support President Clinton very strongly.

Now they are turning to the Republicans and conservatives for help on this treaty. Is this showing up in who you are supporting in the current Senate races? [Laughter.]

Mr. BLACKWELDER. Senator, Friends of the Earth is bipartisan. I myself serve on the board of directors on the League of Conservation Voters, which tries to be bipartisan. We do support Republicans for the Senate, as well as Democrats.

Senator PRESSLER. Not very many.

Mr. BLACKWELDER. Well, I think we try to do it in the most objective way possible.

Senator PRESSLER. I am not picking on you, but is there not some irony in the way this thing is working out?

Mr. BLACKWELDER. I would say the real irony is that Vice President Gore wrote a book, "Earth in the Balance," talking about the need for greater sustainability, and here he and the Clinton administration are supporting a proposal that is totally unsustainable in every way, shape, and form.

Senator PRESSLER. So, this is rather ironic. It is the reverse of what we would expect politically. I mean, it breaks down just the opposite.

Mr. BLACKWELDER. It is a bitter disappointment to us, absolutely.

Senator PRESSLER. Fine. Thank you.

The CHAIRMAN. Thank you. Senator Stevens.

Senator STEVENS. I am not going to pursue that, because I am on your dirty dozen list, so I will just let that one go.

Senator PRESSLER. But you are on their side on this treaty, more or less.

Senator STEVENS. Well, they are on my side, let us say.

Let me ask you, Mr. Brinza, what happens to all of the leverage we have had in the past in utilizing the most-favored-nation clause and treatment with regard to reciprocal trade negotiations? If we approve this agreement, do we still have any leverage?

Mr. BRINZA. I am sorry, Mr. Stevens, I am not sure I understand the question.

Senator STEVENS. I thought it was pretty direct. We have used the most-favored-nation concept to deal with everything from Jackson-Vanick, to Tiananmen Square, to all of the various facets of our relationships with Europe during the period of their recovery. We have had in terms of dealing with the Japanese over fisheries issues. We even used it, I think once, with our friends to the north, the Canadians.

What happens—they are members of GATT, and as I understand it, once we all agree to GATT there is no most-favored-nation concept; is that right?

Mr. BRINZA. No, that is not correct.

Senator STEVENS. Tell me how it would work, then.

Mr. BRINZA. The countries that become members of the WTO, like the countries that are currently contracting parties to the GATT, will have the benefits of most-favored-nation treatment as a result of being party to the agreement.

Senator STEVENS. But that is automatic. They get it already. We cannot deny it to them. We cannot say that we will give it to you for 2 years, as this administration did with China. I disagreed with that, but they did do it.

Mr. BRINZA. Well, Mr. Stevens, China is not a member of the WTO, so that would be the same issue.

Senator STEVENS. I am just using it as an example of how they used it, but how many nations are in this agreement?

Mr. BRINZA. Well, there are about 117-plus that have indicated their desire to ratify. Not that many have ratified, just as we have not yet.

Senator STEVENS. But once they have ratified, they are automatically eligible for most-favored-nation treatment? They are among our most favored nations; right?

Mr. BRINZA. Just as the current GATT contracting parties are.

Senator STEVENS. And we could not withhold that from them?

Mr. BRINZA. Well, there are 123 GATT contracting parties currently that have most-favored-nation treatment with us as a result of that.

Senator STEVENS. But what I am saying is, we cannot use that, right?

Mr. BRINZA. No more than we can use it today under the GATT.

Senator STEVENS. Is it possible to have any concept of reciprocal trade negotiations with any of those members of GATT? Can we go to a member of GATT, if we are a member of GATT, and say, we are willing to offer you a special deal?

Mr. BRINZA. Well, we can offer them a special deal, as we have with Canada and with Mexico in the context of free trade agreements, and Israel as well. We have done that. They then get the benefit.

Senator STEVENS. I do not think you understand me. Can we say, we can give special treatment—we have given special treatment to most favored nations in the past; right?

Mr. BRINZA. That special treatment has been most-favored-nation treatment. We do not give additional special treatment, unless you are talking about something like the generalized system of preferences, or the Caribbean Basin Initiative.

Senator STEVENS. Well, I remember going—Senator Hollings and I were along with Senator Jackson at the time we made a special offer to the Romanians. If they did X, Y, and Z, we would treat them as most favored nation. We almost moved them off of square 1 with that negotiation. We did not, but we did offer it. We are no longer able to do that to the people who are members of GATT; are we?

Mr. BRINZA. We could not do that now, Senator. The Jackson-Vanick amendment applied to those countries that were not contracting parties to the GATT. We were saying that we will give you the same treatment we give to our GATT contracting party, or partners, if you meet the following conditions.

Senator STEVENS. But all they have to do is agree to GATT; right?

Mr. BRINZA. As they do today.

Senator STEVENS. No, I mean the ones that are not members now.

Mr. BRINZA. Well, if they want to become members, then they have to go through a series of accession negotiations. That may be what you are referring to. In which case, we would negotiate with them the terms of coming into the WTO.

Senator STEVENS. The WTO would?

Mr. BRINZA. No. We, as one of the members of the WTO, would be in those negotiations.

Senator STEVENS. But those are not our negotiations, they are the old ITO-WTO. It is a worldwide organization. We have one vote; right?

Mr. BRINZA. It is the same as under the current GATT, where when countries want to accede to the GATT, want to become a GATT contracting party, the United States and other key players in the world would negotiate with that country the terms and conditions of its becoming a member of the GATT, or becoming a contracting party to the GATT.

Senator STEVENS. Are you saying we would have the same relationship if we entered this agreement as we do now under the existing GATT? The WTO means nothing?

Mr. BRINZA. In that sense; that is correct.

Senator STEVENS. I think you ought to read your document again. That is not my understanding of it.

Ms. Wallach, I see you shaking your head.

Ms. WALLACH. I just wanted to cite the provision, because I think I understand what you are getting at, which is, under the existing GATT Article 35, which talks about countries taking exceptions as people come into GATT, there is a provision that allows you to take the exception for a country as far as the whole GATT, or just article 2, most favored nation.

So, perhaps what you were calling this, for instance, when Poland was coming into GATT we, as the United States, as between our countries, took a most-favored-nation exception. Therefore, from your perspective, there was still the leverage of our being able to discuss with Poland that kind of treatment. We made an exception so even if they were in GATT they did not have most favored nation with us.

Senator STEVENS. It was my understanding that no longer exists if we adopt this agreement.

Ms. WALLACH. That is correct. Under article 13 of their proposed World Trade Organization Agreement, this notion of just accepting most favored nation is eliminated. Rather, you have to, before a country gets into the agreement, decide that none of it will apply, so it is not just a matter of taking out that piece and using leverage. None of the rules will apply. It is all or nothing.

What is more, it can only be used as between countries where one of them has not yet come into the agreement and there is notification before they do, which means, unless you have a reservation under this GATT in advance on one of the countries that is in this, and you would like to have one under here, you cannot do it, which begs a very interesting question for which I do not have an answer, but it is an interesting question, which is, China was an original member of the GATT of 1947. The United States took no exception. It lists here who your excepting countries are.

China keeps talking about how it will reenter GATT and the World Trade Organization. If, indeed, they are simply retriggering their membership and we have no exception here, assuming we just would take the outrageous, from the trade perspective step, of using the all-or-none exception, we could not—they were not excepted under here, and that is actually an issue that I stumbled upon because the human rights groups who work with China hired lawyers and stumbled on this to realize that they, if China becomes a member, would lose the best leverage on human rights under the MFN conditionality.

Senator STEVENS. Well, I do not agree with some of their specifics, but I do agree with the concept of the leverage. I think we watched the leverage work in so many instances that it was very advantageous to this country to pursue some of the concepts that are important to us.

Let me ask you, Mr. Silbergeld, along with Senator Inouye, I visited for the first time North Vietnam this year, and we were briefed extensively on how they are going through their industrialization program, and it is very, very bold, but one of the things that sticks in my mind was that the average wage for the first 2 years of the contract that—the one we were briefed on, was \$40 a month.

Now, the other day, I raised the question about the fish tariff here, and by the time I got back to my office, I found that the fishing people in the North Pacific were not as concerned about that as they were about the treatment of processed fish, because now most of the fish that comes from my area goes to one of the Asiatic countries, is processed, and then comes back and is finally packaged for market back in the United States.

But we have lost practically the labor for tuna, for salmon, for—well, not for all salmon, but for most of it. Not most of it, but a great deal of it, but certainly for pollock and for haddock and for cod. The bulk of it is going overseas.

Now, will this agreement not just stimulate that more? Are your people just so interested in the bottom line to the consumer that you are not interested in the jobs that people have in rural areas like Alaska Native villages where they now have 75 percent unem-

ployment in those villages? They used to have canneries and fish processing facilities.

Mr. SILBERGELD. No, Senator, we are not disinterested in that issue. We have reviewed the studies, and the indication is that while there are—and I am speaking about the incremental effects of this agreement, because under the current arrangement, which would continue if this round is not implemented, these things are already occurring, and they are occurring very severely in some areas, and so we cannot compare what would happen in the ideal situation with what would happen under the Uruguay Round, but only what would happen under the Uruguay Round.

These situations are already happening, but the economic predictions are that, (a) there are winners and losers, but (b) there is a net employment gain to be had from this agreement, and the concept that it is possible, by not implementing this agreement, to freeze particular jobs into the economy when those jobs are already being, as you indicate being lost because of many, many other factors is just not one that we think is possible to predict from abstaining from this agreement.

Senator STEVENS. But it does seem to me that you are overlooking the fact that the existing agreement has lost a great many jobs, but this is going to lose them all. What are you going to do about the rural States, and I understand you have some predictions that there are going to be increased jobs in the inner core city area, where a lot of people are really worried about, and I am, too, but I am equally worried about the rural areas, particularly the west coast of my State, where the Eskimo people have 75-plus percent unemployment, and it results from the fact that we have had these changes in the past.

Now, what about round logs. It is my understanding under this proposal that we are going to be able to export round logs. We cannot make any restrictions against the export of some of our basic resources. Are you supportive of that?

Round logs means they have no primary manufacture. Primary manufacture means the people who live in the area at least do some processing of them before they are exported. Now, why should we remove the last vestige of protection for rural jobs?

Mr. SILBERGELD. Senator, if round logs, or the particular jobs, were the only concern involved in this, then, of course, we would not be in favor of having a situation—

Senator STEVENS. You are looking at the global aspect; is what you are saying.

Mr. SILBERGELD. Exactly. We have to look at the global aspect, and what is being overlooked in the discussion about the losers in this winners-and-losers situation is that we need programs to deal with areas of decreasing employment and declining industries, and we cannot tie that to the agreement. We need programs that deal with those problems and help people.

Senator STEVENS. You are really—your consumer groups are primarily interested in the price to the consumer in the United States.

Mr. SILBERGELD. No, we are worried about a great number of social equity situations, but we do not see passing this agreement as producing the social inequity that we are concerned about.

Senator STEVENS. You are not worried about the social inequities that will come about because of it?

Mr. SILBERGELD. We are worried about social inequity in the net balance, and we do not see that defeating the, or not agreeing to the Uruguay Round will fix those social inequities, nor can we predict in the long term what would happen without the Uruguay Round to the particular inequities that are happening.

There are jobs that are being lost in industries that would not benefit from this agreement despite the fact that the Uruguay Round is not the operating set of rules of world trade right now.

The globalization of the economy, problems of declining industries, ebb and flow of jobs, the change in the nature of what the American workforce does, are all very strong forces that are now causing many of our social problems and many of the inequities that have been identified here today, and not passing the Uruguay Round is not a solution to those problems. We need a positive program that addresses those problems.

Senator STEVENS. I wish I could agree with you. I am one who has never bought a foreign car, I do not have any stock in any of the producing entities for automobiles, but I believe that if we are going to make money here we ought to spend money on things that we can keep people employed by doing so. I basically have a great deal in common with my friend, although he is a southern liberal and I am a rural conservative. Now, I do not quite understand why some of your people will not look at the basic concept of jobs and abandon the total bottom line concept.

There used to be a theory of about how money turned over four, five, six, seven times before it hit the Treasury, and that theory, if taken to the logical extreme, means that the more dollars you spend overseas the less money you get even eventually for the Treasury of the United States in taxes paid on income. You do not buy that theory, I assume.

Mr. SILBERGELD. Senator, the theory that we operate on, with respect to those issues, is that consumers eventually have to have the right of choice. Now, we have no problem with consumers deciding that they want to buy from particular limited sources, including that they only want to buy domestic; we have no problem with labeling of origin that helps consumers to do that when they want to do that; but we do believe also that consumers eventually have the right of choice, that imports have provided a great deal of competition, including in areas and in product markets where years ago there was not competition, and that that is to the economic benefit of the Nation as a whole in the long run. And so consumer choice is the basis on which we have pinned our support of this agreement, and we understand that there are problems that the agreement does not address and that there are some problems that the agreement will make worse, and we believe those need to be fixed, but the agreement being, in our view, a net improvement in consumer choice, we would urge that those problems be addressed by programs that are not and cannot be dealt with through the rules of trade agreements.

Senator STEVENS. Well, I could not disagree with you more. My Eskimo friends are great consumers. Except for the food they take from the natural bounty of their area, they import everything. But

they cannot do it without jobs unless they just sit around and get handouts from Uncle Sam, which they really do not like to do. They get accused sometimes of being in favor of it because that, unfortunately, is what we end up with when we have persistent unemployment. They are not on the unemployment roles. They have not been employed for so long they do not show up there. I sometimes think people just sort of lose sight of what is going on at home when they get so global. It is a very interesting thing.

Mr. Blackwelder, I am interested in your comments, extremely so, because I do think that the answer to some of our problems in your area are not to have the continuous battles that your people and mine have had and will undoubtedly pursue.

I think the answer is to try and see what we can do with regard to the rest of the world. For instance, most of the industry—the oil industry that was in my State 5 years ago is either in China or Russia, and they are pursuing drilling proposals without the restraints that they would have in this country. Some of them, I think, are excessive, and we would disagree there, but the basis of them I have never thought was wrong.

Having been, along with Senator Jackson, the original introducer of NEPA—it was his bill, but I cosponsored—but I do think that we have a problem here in terms of what we are going to do with regard to these standards abroad. Have you addressed this? Will this do anything to raise the standards of the partners under GATT toward the levels that we are now pursuing as far as our industry is concerned?

Mr. BLACKWELDER. That is a good question. Our concern at Friends of the Earth is that it is the exact opposite, that this agreement will be giving transnationals greater flexibility to go where there is very little enforcement. Just last week, people from Africa were in my office describing the situation in Nigeria where Shell has done a great deal of pollution damage. They even charged that the company had been involved in serious human rights abuses. Other people have visited us from Africa with complaints about transnational oil companies not following the kinds of rules that we would make them follow in the United States or in a northern industrial country.

This agreement, I think you hit the nail on the head when you said things are bad now but this agreement is going to make them even worse. We ought to have an agreement that addresses the serious concern about loss of jobs in the North, because if this agreement is going to swell the ranks of the unemployed we will not be able to address key social issues.

Consider what Congress was looking at this past year: health care, crime, and the like. These are manifestations of problems that are only going to get worse if you have more and more job loss. We need rural community stability. This agreement undermines rural community stability. And I do not think, in answer to the question about jobs, if you looked at any manufacturer in the North, you could make a case why that manufacturer would not want to move offshore if they employ any number of people.

It is thought that high-technology jobs might be an exception to that, or services, but if you look at both, if either of them start to employ substantial numbers of people then all of those economies

that they would get where you can employ 30 or 40 people for the cost of 1 American will accrue, and those industries will move just as Swissair, for example, has moved some of its operations to India.

And so you will wreck the community stability in northern countries; at the same time, you will not be doing anything to address the incredible problems that exist in the Southern Hemisphere.

So, from almost every standpoint this agreement is an 18th century approach to 20th century problems, and we ought to step back and really look very hard at the interrelationship between social and economic factors, which this agreement does not want to do. This agreement wants to just give a go-ahead to the same old *carte blanche* free trade from Ricardo's days without recognizing that we live in a vastly different world. And the trends that you cited in Alaska, I can cite examples all throughout the Northern Hemisphere of the same problem: deterioration of rural communities, unemployment growing, companies moving out, and they are not producing the benefits in the South.

Various elite control those, and they are exploiting the workers in those countries, including children, and the situation is actually becoming worse, not better.

Senator STEVENS. There are so many of my projects held up in Alaska because of some of your people, I find it strange that we are in such agreement, as Senator Pressler indicated, but I do believe that we are on the right side.

Mr. Brinza, let me ask the last question. Mr. Chairman, I have been taking a lot of time. Why would it not have been just as good for the United States to extend GATT as it stands right now and try to iron out some of these problems we are all talking about?

Mr. BRINZA. Well, the difficulty there, Senator Stevens, is that the GATT was limited in its scope. It applied only to goods and goods trade. There is a whole new set of areas in which trade is occurring that is beneficial for the United States that we needed to make sure we would not have barriers erected against, that we would not be discriminated against, that we would not be unable to continue to have trade. I am thinking, for example, of services, which is a very important area for us. As a developed economy, that is an area that is very big and very important.

Senator STEVENS. What kind of services do you have in mind?

Mr. BRINZA. Trade in services. Anything from insurance to engineering to accounting banking to whatever kind of services that we provide, and we are a service economy in many ways.

Also, it was very important to bring in additional protection of intellectual property, which is why we have a TRIPS, or Trade Related Intellectual Property Rights Agreement, under the Uruguay Round. It was very important to go into these other areas to ensure that the progress we had made in trade was not lost, that we were not blocked in our ability to be able to trade where we are strong with our partners.

I would mention, by the way, that I did not want you to walk away with some misrepresentations. The analysis you were given a few minutes ago with respect to article XXXV unfortunately is as flawed as the analysis that you have been given with respect to the sanitary and phytosanitary agreements and the analysis that was contained in the studies that were alluded to earlier both by the

Center for Policy Alternatives and the food safety report. Article XXXV currently talks about disagreement alternatives. Article II of this agreement—article II—is the tariffs provision, not the most-favored-nation provision, under the GATT, and it is an all or nothing accession under the GATT right now, except for the article II provision. You have to decide not to apply it at the time that one becomes a contracting party to the GATT. So, it is very similar to the situation I described for you under the WTO agreement, as well.

Senator STEVENS. I would only make one comment. I think those of us who lived through the period where this country came out of a depression and suddenly had the unfortunate responsibility to become the strongest Nation in the world, were capable of doing that within a period of 6 years, really worry very, very greatly about what is happening with the trend that my friend from South Carolina constantly mentions, and that is your exporting more and more of our manufacturing process, you are making us more of a service country, we are going to be taking in everyone else's laundry, but we are not going to be producing many clothes.

We are not going to be capable of meeting the challenge, if it comes to us, God forbid, again to be the country that has the capability of saving the world. We did it twice in this century. The next century will not see an America that I grew up in, an America that has the capability of retooling, of using its manufacturing capability, to meet a challenge in the area of national security.

If there were no other reason than that, I would still oppose GATT, this version of GATT, because I think we have to restore our manufacturing capability, we have to find ways to stay ahead of the game, you are going to be exporting the basis for research and development, new technology for the next century will belong to other countries, not to ours. I think this administration has gone further than any administration I have ever seen in finding ways to accommodate the people who believe only in the bottom line. I think there is much more to this democracy than the bottom line, and number one is our responsibility to make sure we are capable of meeting our national security requirements. I do not think we would be able to do that very long under this agreement, and I congratulate my friend here for being one who constantly reminds the country of the export of not just jobs but of manufacturing capability and technology. It is the worst crime of this bill, in my opinion.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Mr. Silbergeld, I followed your statement with interest. And on page 2, for example, you summarize in four points. You say on the whole, however, it is our view that the Uruguay Round agreement is good for consumers. Our conclusion is based on the following considerations: One, two, three, four. I will address my questions to the first three, and No. 4, being complete here regarding a subject of very particular interest to U.S. consumers, the agreement will permit the United States to maintain our existing and adopt new national food safety, environmental, and other technical standards that may exceed internationally recommended standards. We know now, from the hearing this morning, that that is in dispute.

But on balance, you say, No. 1, "the agreement will increase consumers' access in the marketplace to a wide variety of goods and

services." Like what? How do we get access? I see not being able to get the access specifically. The Special Trade Representative, Ambassador Mickey Kantor, is trying to get access to Japan. Why? Because the very GATT agreement does not give him access. Where do you find all of a sudden this gets us access?

Mr. SILBERGELD. Well, Senator, it will reduce what we have left in the way of both tariff and technical barriers.

The CHAIRMAN. Well, when you reduce the tariff you reduce the cost of the offshore production. There are high tariffs now; specifically, let us say textiles, and other things that we can enumerate. So, when we reduce those tariffs, that reduces the cost to the offshore production—where we have a nick in the economy now becomes a tremendous hemorrhage in imports just flowing into the United States. That is why these countries all favor that. We still cannot get into Korea; we still cannot get into Taiwan and the other places, Hong Kong, I can go right on down the list on account of their economic systems. That is why Ambassador Kantor is aiming at Japan. If we can break Japan, we can get into these other systems. I do not see the access that you talk about.

Mr. SILBERGELD. First of all, we still do have restrictions, and U.S. consumers, for instance, pay a lot more for sugar than they would without restrictions.

The CHAIRMAN. We have got access to sugar.

Mr. SILBERGELD. We have access to it. We pay a lot more than we eventually will if this agreement is implemented.

The CHAIRMAN. Do you think that they would take our support laws and everything for sugar and would vitiate those laws, then?

Mr. SILBERGELD. Yes, it would.

The CHAIRMAN. Oh, my heavens. Now you have got Brinza, he is going to jump up in the chair. He is saying our laws do not violate GATT, and you at the end of the table, well, we got rid of that law, what other law do we get rid of?

Mr. SILBERGELD. Well, I will let Mr. Brinza speak for himself. I am not sure that he would agree that this agreement is going to leave laws containing those kinds of trade barriers in place in the long run, but, Senator, the whole point of this agreement is to reduce the barriers in those countries and others that you identified as our being unable to get into.

The CHAIRMAN. What barrier is reduced? You are right on the tariffs, but that means nothing to either side in the sense they say. What barriers? That is the whole problem that we have in this global trade. That is the difference that Senator Dorgan and the other Senators are talking about. We still do not get access because you do not remove those barriers. I could list them at length, but since you listed it down that we are going to increase the access, I want to know whereby that access is increased.

Mr. SILBERGELD. First of all, let me clarify, No. 1, Senator, we are talking about consumers. We are not only talking about American consumers. I would point out that we are a member of the International Organization of Consumers Unions, which is an organization of over 100 members in over 80 countries. And those organizations by and large, with very few exceptions, believe that their consumers will benefit from access to increased goods and services, and we believe that our consumers will, and on the whole, when

you take down barriers, both tariffs and technical barriers, you see both goods and services flowing where competition leads them. We think that that free flow will reduce price where price is not competitive—obviously, it will not where price already is—and increase consumers' choices.

The CHAIRMAN. Well, it seems to me you already have succumbed to one-man-one-vote in that international consumer organization that you have. Let me ask about your point No. 2, "the agreement will create increased economic activity and predictably provide a net gain of employment at home." Now, you enumerated in an answer just a moment ago to Senator Stevens all these changes. You know, we have got right now, and we will all agree, GATT, and we will all agree it is the Tokyo Round of GATT, and we have pointed out at previous hearings a litany of the disaster. We were promised billions in consumer savings. Studies say it was less than \$700 million. We were promised 100,000 jobs, but GAO said at best it could be estimated at 750 to 1,400 on their figures. But we know otherwise.

We know further that there has been a loss of 3.2 million manufacturing jobs. We have had now a deficit in the balance of trade and outflow of wealth for this great United States of \$1.5 trillion. What jobs are left are all part time. Manufacturing has gone down from 26 to 16 percent of the workforce, and the take-home pay of, let us say, the full-time worker is 20 percent less than what it was 20 years ago.

We could go specifically to the column, and we had this last Friday, where the headline in the Washington Post said, "Rising Tide Does Not Lift Clinton." And I tried to explain why the tide is not rising, in that while they brag how he had created 4.5 million jobs over 3 years with the deficit in the balance of trade this year, 1994, being \$150 billion, and each billion representing 20,000 jobs, we are going to lose 3 million just in 1 year. It took you 3 years to get 4.5; you are going to lose 3 million jobs; and they are manufacturing jobs. The jobs being created on account of the low-interest rates, construction jobs, service jobs, those kind of jobs are coming in. Manufacturing jobs are going out.

That is exactly the difference we have with Consumers Union about economic activity and predictably providing a net gain in employment. Where did you get that prediction?

Mr. SILBERGELD. Well, Senator, Senator Dorgan asked the same question. I will send up the list of studies that we reviewed that reached that conclusion. I believe the committee heard last week from Mr. Bergsten and a number of others, and as Senators have pointed out, economists may disagree. The chairman makes a very eloquent argument against really all trade agreements and for totally managed trade. But it is our reading of the literature on what has happened in the long run when there is not a set of trading rules that gives countries access to each others markets that you end up with trade wars that in fact cause economic disruptions that are very similar to the ones you describe, and perhaps worse. Many economists believe that the Great Depression arose out of a great trade war, and it may be philosophical as to which set of economists or whether you accept the economist view or some other view.

But we come down on the side of those who agree that the economy is better off with lower trade barriers and with access to markets so that goods and services can basically follow the law of supply and demand. Many of the effects that you describe, which I agree are very serious social problems, cannot be managed by trade agreements or by measures to manage trade, that those effects are happening in the face of measures in some areas to manage trade, and that decline of employment and the resultant community effects in particular kinds of industries, in particular kinds of services even, cannot be managed by Government policies, that the globalization of economic markets is not something that one can stop by passing a law or wishing that things were otherwise.

And this may be as much a matter of philosophy as a matter of particular economic studies, but that is our reading of the literature and of history.

The CHAIRMAN. Well, most respectfully, Mr. Silbergeld, you say I make an argument for managing trade. We are talking about philosophy. Let us talk about the fact, because we have got managed trade and we have got it at the two extremes, ours is a management for high standards of living. Theirs is a management to control the economy, to build up their economic strength.

Now, we have tried to penetrate that so-called bloc, Japan and otherwise, on their managed trade, managed economies and everything else, by the good Boy Scout example of setting the example for 50 years now—look at us. Free trade. Free trade—and we let go veritably the manufacturing sectors of electronics, shoes, clothes, going right on down now to hand tools and computers. You used to say, you know, let them make the shoes and clothing, and we will make the airplanes and computers. Now they are making the computers, the airplanes, the shoes, and the clothing.

On the managed side for us, Senator Exon and I and Senators on both sides of the aisle, we all vote for minimum wage, we all vote for clean air, clean water. We did not want to trust commerce, trade, business with safety, so we put in the Occupational Safety and Health Act.

We did not want to trust—Commerce, which when I first came here to the National Government, regulated the environment, so now we have got the Environmental Protection Agency and otherwise, and so we have got the Social Security, Medicare, Medicaid, plant closings, parental leave, unemployment compensation, you can go all around, and you call that, and we all love it, the high standard of American living.

On the other hand, they have got a high standard of economic protection. They have got their keiretsu. They have got the cartels in Germany. We know, for example, the corporation referred to earlier by Senator Dorgan is not the corporation organized for the benefit of stockholders as we have it on Wall Street. On the contrary, it is a sociopolitical organization where Boone Pickens could not even get a seat on the board even though he bought a controlling interest of Kyoto Manufacturing, a Japanese firm.

The International Organization of Consumers Unions and many developing nation consumer organizations believe that, despite shortcomings, the agreement will enhance most developing nations'

economies, increase their employment opportunities and their national living standards.

Of course, our responsibility is our economy, and it is in trouble. The security and strength of this Nation are like a three-legged stool. One leg is the values you have as a country, and the United States of America has the highest of values, feeding the hungry in Somalia, promoting democracy in Haiti. The second leg is military strength, or power; we are the superpower militarily.

But the third leg, the economic leg is fractured. We all have a general interest in the living standards around the world, but at this point in history now, with the fall of the Wall and the end of the cold war, we have a wonderful opportunity to move in and strengthen our economy, but what you say does not occur.

Let me refer and put in the record the Boston Sunday Globe series back in July, and I will read just a couple of the paragraphs, and it starts, from Tangerang, Indonesia.

The global economy begins here in Yati's shanty, inside a wooden box where she keeps a few coins, a glass bead necklace, and a powerful document on world trade. The document is her pay stub, and it shows that Yati earned 165,000 rupiah, not quite \$80 for a month of sewing bits of leather and lace for shoes that bear the name Reebok.

She worked 40 hours plus 90 hours of overtime. It cost less to live in the sweltering villages of rural Indonesia than almost anywhere else in the world, and Reebok International of Massachusetts goes to great lengths to portray itself as a conscientious promoter of human rights in the third world. But when Yati leaves the clean, well-lit factory, she has only enough money to rent a 10-by-12-foot shack with dirty walls alive with gecko lizards. There is no furniture, so Yati and two roommates sleep on a mud and tile floor.

Through a translator, Yati asks, how much Reebok cost, U.S.? The answer is on the bottom line of her monthly paycheck.

The \$80 she works is—the cost of one shoe is what she gets.

Now, what is happening is that the poor of the rich nations are subsidizing the rich of the poor nations. That is what is really occurring. We are all in trouble. The poor are getting poorer. The income of the bottom 60 percent of families is down, but the high level of the economy and the income-earners in America are up 7 percent, and that is the trend during the eighties and early nineties there.

That is why I am worried about the U.S. economy. You are nodding your head, and yes, you can get a cheaper Reebok, but I am not winning getting that cheaper Reebok. I say I mean the United States, and Indonesia is not, either. You see what we are talking about. They refused environmental concerns, when this was agreed to in December.

Later, when our friend Ambassador Kantor went to Marrakesh in April, they still refused workers' rights, environmental concerns. Later, when the President himself went to Naples in June, tried to get financial services, they turned away from him and went to the next room for a drink.

We are not leading, and we are not helping either side. We have got to sort of get a better agreement, and certainly not have a responsible group like Consumer's Union come in here—do you think a consumer is going to be on that trade dispute panel?

Mr. SILBERGELD. Senator, you have asked a lot of questions, and I will answer—

The CHAIRMAN. Just on that last one, and you can answer all of them.

Mr. SILBERGELD. I do not know who is going to be on those panels on standards. I have heard a commitment from Ambassador Kantor to seek to open up those panels to relevant experts beyond the usual traditional coterie of former trade officials and international lawyers, and the agreement does have a provision now for five-member panels, and the task ahead is to get some rules in the WTO, which has not finalized its procedures for such things as panel selection, to get environmental experts on panels involving environmental standards.

The CHAIRMAN. But you are asking me to vote before they get them. You are saying, "Senator, we want your vote and approval of this before we get all of those things." That is the whole thing. We cannot do otherwise. It is set out before us. Now, you would have a point if we had obtained some consumer representation, but as you indicated in your answer, we did not.

It is going to be these trade experts, bureaucrats, a bunch of trade lawyers that are going to sit in secret. Can you imagine—the consumers will never get a knock on the door in Geneva.

Mr. SILBERGELD. One of the issues that we have raised, and that we are trying to get movement toward, is opening up those panel hearings.

Now, when they decide—I have heard it said, well, they decide in secret. So do panels in the Federal court of appeals. So does the Federal district judge when he sits down in chambers to write his decision, and I do not have any problem with that. Our problem is that the hearings are secret.

It is not, as one might conclude, a secret, however, as to what they have decided, or how they have decided, or on what arguments they have based it, even under the present system. The written panel decisions which becomes, as a matter of practice, generally available after the parties have had a chance to decide whether they are going to settle the matter, or accept the panel decision, become public, and those decisions, those written decisions outline the arguments that each of the parties have made and the consideration that the judges have given to them.

If you do not already have, I would like to send up for the record one or two of those decisions so that folks can see, when they read the record, just how much we know about what arguments the government has made, and what consideration the panelists gave to those arguments.

I refer, for instance, to over 100 pages of what the panel noted in terms of arguments and law with respect to the so-called Beer II decision, which I do not consider to be a bad decision, because it dealt with a lot of protectionist measures that reduced consumer choice, solely for the purpose of protecting local producers, and the CAFE standards decision, which I consider to be a landmark decision in the environmental area, and I will send it up, and if you want to put it in the record, that is fine, and if not, it will be there for the committee's files.

The process is not adequate, but it is also not eternally secret, and I think that the task ahead is to make that process better and

more open, and that is the task ahead, whether we accept disagreement or whether we go back to the current situation.

In fact, the provision for option for a five-member panel and the opportunity—the opportunity, certainly I agree, not the certainty, of getting panelists there who have some expertise with respect to the particular issue involved, instead of just trade, is something that we gain with the new dispute settlement rules.

The CHAIRMAN. I am trying to limit myself, because Senator Exon is waiting, and I know many of you want to go to lunch. Just briefly, when you say not eternally secret, when is it not secret?

Mr. SILBERGELD. Well, Mr. Brinza can correct me if I am wrong, but I think there is about 60 days—

Mr. BRINZA. Actually, Mr. Chairman, we make the panel report available once we receive it, so it is not even that period of time.

The CHAIRMAN. The proceedings are secret; is that not right, Ms. Wallach?

Ms. WALLACH. Today, Public Citizen just filed yet another lawsuit simply to try and get the documents the other countries submit to the panel. The documents both parties submit to the panel are secret. We won a lawsuit under the Freedom of Information Act in 1991, and so now Americans can get our own Government's document. We had to win a Federal lawsuit so that we could get our Government's filings before GATT. We still cannot get the other countries', and that is our lawsuit today.

As for how the World Trade Organization would operate: The Uruguay Round text is very specific that there is only one rule set up in advance. There are lots of other procedural rules to be developed in the future if the WTO is established. The one rule that is in there in print right now: Panel proceedings shall be—hearings shall be "confidential," and as well there is a provision that the panelists cannot be associated with which position they take.

So, you normally, in the Federal court analogy, have so-and-so dissenting, so-and-so concurs. You can figure out which judge took which position. In GATT, having that information would be particularly important because there are conflict-of-interest rules. That's right, the panelists could have a business interest in the case they're judging. The process is so entirely secret that the Freedom Forum organized newspaper publishers and a number of journalistic associations in an unprecedented letter to the President saying: "We have never seen anything like this, where these kinds of decisions can be made with the press and the public excluded from all of the hearings and all of the documents." Once the decision is a done deal and it's too late to affect it, you can get the panel decision although it helps to know someone in Geneva or you are at the mercy of the trade office to release the document in timely fashion.

The CHAIRMAN. Well, you cannot even get it then. I mean, according to Mr. Brinza's office we had won the CAFE case, and then when we finally could find a copy of it, we found out we had lost. Is that not correct, Mr. Brinza?

Mr. BRINZA. Mr. Chairman, no, actually, we won that case, as we indicated earlier, except for the panel's finding with respect to the dual-fleet requirement. They upheld us in all the other provisions,

and we made that panel report public, immediately after we received it—

The CHAIRMAN. Well, I wish I could show you the Financial Times.

Ms. Wallach, do you want to comment?

Ms. WALLACH. Well, what I was about to say is, at least you can get the panel report.

The CHAIRMAN. But go right to CAFE. I am trying—with limited time here, we lost the CAFE case.

Ms. WALLACH. To get to the point, unless you have a friend in Geneva or the trade office USTR decides to let the document out, you have to rely on the government briefing about the case. The CAFE case was a split decision. The article you have from the Journal of Commerce is a very interesting article because the headline is: U.S. loses another environmental challenge, won't that be trouble for GATT approval. The interesting thing is, that journalist is based in Geneva at the GATT, so he was not privy to the USTR version of what had happened. Instead, he just got the panel report from GATT and got to read it himself. It is a split decision. The United States won on some points, the United States lost on others. The bottom line is the panel ordered the United States to change one provision of the CAFE law as GATT-illegal.

The CHAIRMAN. I will just make this a point for the record. "The panel rules U.S. fuel acts as a trade barrier." The first paragraph, "U.S. opponents of the pending world trade agreements may have been handed a new weapon Friday when an international panel ruled that the U.S. fuel economy standards act as a trade barrier."

Now, we have got that decision, and that is of primary interest not only to the committee, but to this particular Senator. I handled the hearings on the fuel economy standards way back in the seventies, and our distinguished chairman, Senator Magnuson, said, now, let Senator Stevenson handle that on the floor, and there became some difference, or a misunderstanding afterward, as Senator Adlai Stevenson, a distinguished Senator, incidentally, was handling it, and then we took it back over, and so I am intimate to the fuel economy standards that we set in the original instance.

In fact, I want to make the record clear, the vice president of Chrysler, outside in the hall at the time we were having the hearings, called me an SOB, and he later, 3 years later, came back in and apologized to this Senator. He said, you know, if we had made some more Horizons and Omnis, we would not need this Chrysler loan.

So, we know and feel keenly as to whether we are winning or losing specifically without all the double talk.

You testified, and I want to give you, Mr. Brinza, a chance to clear that part of the record, that we do have a veto in the Uruguay Round. Is that still your standing, that you think the United States has a veto in these proceedings?

Mr. BRINZA. As I indicated, under article IX, establishing the World Trade Organization, decisions are to be made by consensus except as otherwise provided. There are provisions for voting in particular instances, but in those key areas that we have discussed it would still be made by consensus. Now, with respect to dispute settlement proceedings, as we have discussed also, the panel re-

port, assuming that it is not appealed or if it is appealed the appellate panel report, is to be rejected by consensus. Otherwise, it is automatically adopted. That is the situation with respect to dispute settlement.

The CHAIRMAN. I think any fair reading would show that under article 9 it says, yes, consensus, and if you do not get the consensus, specifically you are subject to a vote, and we have got one-man-one-vote, we do not have a veto. And we will put into the record, not to print the book, the section of the "1994 Report on Unfair Trade Policies" issued by the country of Japan finding the 301 procedures as unfair trade practice; we have the Bluebook of the European Commission, "Report on United States Barriers to Trade and Investment Services of the European Commission," page 12, saying section 301 contradicts GATT; and the statement by the Prime Minister in Tokyo, if there was any doubt about it, in Tokyo, and this was earlier this year, and I quote Hosakawa. Prime Minister Hosakawa told the heads of Japan's Big Four business organizations, "The United States is threatening to use section 301 in the bilateral framework trade negotiations. Japan will have to act to contain the move through the World Trade Organization."

Now, there it is. He is going to go against us, the Europeans are going against us, I do not know, unless we can get Antigua to help us, how we are going to prevail with one-man-one-vote. I mean, heavens above, you folks have got to be realistic when you present a problem to the national Congress. Do not say we have a veto when we do not have one, and do not say that the important issues like 301 still persist when you can see it is going out of the window. The minute we vote yes, we have repealed it. Yes, the U.S. Congress has changed the law. That is technical language to say that GATT does not change the law, but when we approve this it is a goner.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. Let me make a few statements. I have been listening with a keen interest all during this hearing and I appreciate the contribution that this panel has made. I do not want to overdramatize this, but for one who has been around awhile and seen dramatic changes, for one who has made some study of history, and I remember in history the Roman Empire and I remember the British Empire and others that have gone by the wayside, where are the Brits and where is the Roman Empire today gone? I do not mean that they are gone only because of trade, but I have very much a concern about this whole proposition.

Certainly, I think we should first recognize, ladies and gentlemen, that every country in the world has covetous eyes, and justifiably so, on the buying power of Americans. If I were a manufacturer of tiddlywinks in Bangladesh, I would certainly want a chance to get into the American market to sell my tiddlywinks, because I know that there are more dollars, at least at the present time, in America to buy tiddlywinks than any other place in the world.

Therefore, when we talk about these international trade agreements we should realize and recognize the position we have now. And for the life of me, at least at this juncture, I have not been

able to come to the conclusion as to why we should open up our markets even more without getting some assurances of return.

I am reminded, and you touched on it a few moments ago, Mr. Chairman, as to what is happening in the United States of America. Poverty rates are increasing. Average wages have been flat or gone down for the last 20 or 30 years. How have we made up for that?

Well, of course, we should recognize that since World War II, mom has gone to work when basically she did not work before. We have three children, and in each and every case they and their spouses both work. That has brought their standard of living up because two of them are fully employed. It is a long ways from 1950 when a high school graduate in Lincoln, NE, could go to work for Goodyear and make enough money to support he and his wife and his two or three children. It is a long way from that. There is no way that that high school graduate can do that today. Mom has to work.

I simply say that I do not think that we have looked as closely as we should at the fundamentals of what has been going on, what has been happening, in America, and why we, at least at this juncture, are still the mecca that all other countries want to look to to sell their products. I do not have any objection to them selling their products here, but we come back to the situation that has been made, I think, by every member of the committee that has addressed this matter today, and that is a matter of the standard of living.

The Senator from South Carolina indicated a story from the Boston Globe. I remember very vividly a year or so ago on television, side by side, a woman I believe in New Mexico or Arizona who had a job as a minimum wage \$4.50, \$5.00 an hour as a seamstress. The plant moved out of Arizona or New Mexico or wherever it was into Old Mexico, and they had the woman who had replaced her with the new plant in Mexico, and that woman in Mexico, if I remember right, made 75 cents an hour compared with \$4.50 to \$5.00 an hour by the woman in New Mexico or Arizona. They had them side by side on the screen. We saw that the house that the family lived in at the minimum wage level in New Mexico or Arizona, and we saw the shanty dirt floor where the woman who made 75 cents an hour.

The two women had a better understanding, I think, than some of the experts do on trade. They both felt sorry for each other, the one who had lost her job and the woman in Mexico who had taken her job said that she understood, but it was the most that she had ever been paid in her life or ever hoped to be paid in her life. That was a good lesson to me on what we talk about on standards of living that I think we have ignored.

But let me get back to this World Trade Organization. I think that is the crux of this whole thing that we had better take a very close look at, and we have gone into it to some extent here this morning. I wrote this down, and correct me if I was wrong Mr. Silbergeld, I believe you said in your opening statement, "each Nation can set its own standard for protection." Is that an exact or accurate quote?

Mr. SILBERGELD. That is correct, Senator. We are talking about the protection of human, animal, and plant life and health.

Senator EXON. We are talking about what?

Mr. SILBERGELD. The protection of human, animal, and plant life and health under the sanitary and phytosanitary agreements which govern nations' food safety measures.

Senator EXON. Oh, that statement, was that an accurate quote from what you said?

Mr. SILBERGELD. Yes, but it is in the context of protection of life and health. We are not talking about the right to protectionism.

Senator EXON. Oh. Well, I am glad that was clarified.

Now, let us go to the World Trade Organization. Certainly, one of the most asked questions about GATT and a concern about GATT is the World Trade Organization. History has been replete with violent clashes on philosophy with regard to world organizations, world governments, things of that nature. The United States has always been against that across the broad spectrum of our political philosophy. But it seems to me that I want to know where this so-called World Trade Organization that, as I understand it, is going to be the deciding factor, the court of last resort, if you will, with regard to difficulties that are going to come up if this agreement is ratified, I would like to first ask where did this idea come from? And I ask you this, Mr. Brinza, particularly because you are involved in this from the administration's standpoint. Where did it come from? Did the Clinton administration invent this, or did the Clinton administration inherit this World Trade Organization concept? How do you predict that the United States will fare when conflicts do come up in the World Trade Organization? Would you please amplify for us once again, Mr. Brinza, the concerns obviously felt by members of this committee with regard to our selling out or giving up some of the power and influence that we have and turning it over to a one man one vote concept in the end in a World Trade Organization? Why is that good for America?

Mr. BRINZA. Senator, I should begin my response to your question by saying that I will answer as best I can. As I indicated earlier, I am here to discuss standards issues. I think this is significantly broader than standards issues, and so you do not have your best person here to give you an answer on this. I do know that Ambassador Kantor has spoken to this before this committee previously, and I refer you to that testimony and to that hearing, as well.

With respect to where did the concept of the WTO come from, I think we all understood for some time that in expanding under the Uruguay Round negotiations some of the areas that are covered by the current GATT by bringing in services, intellectual property, et cetera, that we were going to have to make changes in the institutional structure of the GATT. And I think one of the options that was presented was the equivalent to the WTO, and that was something that was arrived at in the course of the negotiations in Geneva.

With respect to the one-country-one-vote issue, that is something that technically exists under the current GATT. It provides for voting. The practice has been to decide by consensus. As we indicated earlier, now the WTO agreement actually codifies the practice of

deciding by consensus. It gives us more protection than we have under the current GATT, provides for differences in the way that decisions are made depending on what the decision is on, and so this is something that we worked out.

With respect to how we are going to fare, I would say that actually I am sitting here in the court of last resort for many areas, with respect to the United States. With respect to whether we want to change a law, it is going to be the Congress that makes that decision, not the WTO. With respect to how do we want to respond to the unfair trade practices of other countries, that is going to be something that is worked out by the administration with the Congress. So, that is something that still is reserved to the United States to make those types of determinations.

Senator EXON. Well, then you seem to be in conflict that I just received from Mr. Silbergeld when I asked him whether or not what the interpretation was was his statement each nation can set its own standard for protection. I thought his response was that is only with regard to environmental standards and things of that nature. It seems to me that, as I understand this and as many people understand it today, and as at least two of our witnesses seem to have testified today, that the World Trade Organization is a long step backward, in my view, from what we have now under GATT. Certainly, under the new agreement that you are recommending that we approve, the World Trade Organization will have much more power in influence than it has today under the Tokyo Round; is that right?

Mr. BRINZA. It certainly would cover a lot more areas than it would cover now, mostly at our request since we had wanted it to cover those additional areas. But in terms of the powers or in terms of the type of activity that is going to be engaged in, I do not believe that is accurate. I do not believe you can say that this is a long step backward, or for that matter forward, in terms of power.

Senator EXON. If that is true, then I should not be concerned about each nation can set its own standard of protectionism. Are you telling me that we can set our own protectionism in the United States of America if we ratify this agreement?

Mr. BRINZA. Mr. Silbergeld's answer was exactly correct that the agreement talks about the level of protection meaning human, animal, or plant life or health or the environment, for example. This agreement certainly is not license to set your own level of protectionism. The agreement is all about dismantling obstacles to trade and dismantling barriers that block our exports to other countries. So, it is a step forward in terms of our ability to trade with other countries.

In terms of the level of protectionism, if the United States were to adopt a measure that was protectionist, then that would take away some of the benefits that we have agreed to provide under the agreement and other countries have the ability to take away some of the benefits that they have agreed to provide us as a result.

Senator EXON. But that would only be, in the end, whether the World Trade Organization under the one-person-one-vote would apply; would it not?

Mr. BRINZA. I am sorry, Senator, no. What would happen in that case is if the United States were to adopt a law that was protectionist in intent, that was in contravention of its obligations under the agreement, then if another country wanted to challenge that law they could bring a complaint before a dispute settlement panel that is established under the WTO, and then that panel report would go forward. If the panel were to issue a report finding that we had in fact not lived up to our commitments, what we had agreed to under the WTO, then that would be presumably adopted by the WTO and then the country that brought the complaint would be able to withdraw equivalent benefits.

In other words, if we are not going to live up to our end of the bargain, they would have the right not to live up to their end of the bargain to the same degree.

Senator EXON. And that would only affect the two countries in dispute over a specific matter; is that what you are saying?

Mr. BRINZA. That is correct.

Senator EXON. Let us take a specific matter. As you know, there are protectionisms, especially in Europe today, with regard to our meat imports going into certain countries in Europe. If I understand you correctly—let us take France, for example. I do not know whether it is true or not, but I believe France is one of the countries that have high tariffs on our meat coming in. If France wanted to continue that process, and if we said that is a violation, France, as a member of GATT you cannot do that, GATT could come back and say to us no, this is not, this is a right that we have, and that would be resolved between the two countries. And if they could not agree, then it would go to the World Trade Organization for their determination? Is that right?

Mr. BRINZA. If we had a problem—and in this case we would be dealing with the European Community as a whole, but if we had a problem with the law of France, then we would go to the European Community. Consultations in the first instance are mandated under the agreement. We would have to sit down and talk to them and try and understand what their position is, and they would have to understand what our position is, and we would try to explain that to them.

If we were not able to work that out, then we would go to a dispute settlement panel before the WTO. We would ask that a panel be convened to hear—

Senator EXON. The French and the Americans?

Mr. BRINZA. The Europeans in this case, and the United States.

Senator EXON. And they cannot agree.

Mr. BRINZA. Well, the panel would then issue its report. The panel would hear both sides and say, well, we think the United States is correct, or we think France is correct in this case, and that report, that is what goes on to the dispute settlement body, which is an organization under the WTO.

In that case, that report is what is brought up for adoption by the WTO.

Senator EXON. By the WTO?

Mr. BRINZA. Right.

Senator EXON. And certainly, getting back to what the chairman has asked on numerous occasions in different ways, then the one-man-one-vote would apply.

Mr. BRINZA. Well, in that case, if you are before the WTO, it operates, in the case of adoption of a panel report, it operates on the basis of consensus. The panel report is automatically adopted unless there is consensus to reject the panel report.

There is also the appeal stage in between, which we have not discussed. You have the ability to appeal, in which case you would have an appellate panel report in front of the WTO.

Senator EXON. Mr. Blackwelder, could I ask you or Ms. Wallach to comment on this? I suspect you are more sympathetic to my concerns than the other two members of the panel.

Mr. BLACKWELDER. Yes. In fact, I would like to disagree with their answers. Our judgment is that this WTO is GATT on steroids. It is much more potent, and if you did hear, the exact answer was that the panel makes its ruling, and that ruling automatically takes effect unless you get everybody to agree that it should not.

Well, the person that brought the complaint is not going to agree or stand for that, so the ruling is automatically going to be adopted. It would be ridiculous.

Furthermore, any nation can try to set whatever standard it wants to set, right, but the point is, in quoting section 2, "if that standard goes beyond this principle of being more trade-restrictive than necessary, it is challengeable and can be challenged," and I quoted that earlier.

Section 2.2. "Technical regulation shall not be more trade-restrictive than necessary to fulfill a legitimate objective," and so anybody can try to achieve a certain level, but they may not actually get there.

So, what you have got now also in the World Trade Organization is the ability to impose a cross-sectoral sanction. In other words, your fishery law is challenged, and they put a sanction on your telecommunications industry until you change your fisheries law. You say the Marine Mammal Protection Act, now, that is very draconian, but the quotation that I put in my testimony was to the effect that they really can come in and force Congress to change it.

I think if you read the section 21.1—let me just read it to you. "Prompt compliance with the recommendations or rulings of the dispute settlement body is essential in order to assure effective resolution of disputes."

And under section 3.7, "The first objective of the dispute settlement mechanism is to secure the withdrawal of the measures found to be inconsistent with the GATT. The provision of compensation—that is this cross-sectoral sanction—"should be resorted to only if the immediate withdrawal of the measure is impractical, and as a temporary measure"—temporary measure—"pending the withdrawal of the measure which is inconsistent."

So, these sanctions are only supposed to be temporary. You, the Congress, have got to change your law. That is what it is saying. We are signing on to this, and that is reiterated elsewhere, in section 22.1, "Compensation and the suspension of concession and other obligations are temporary measures available."

Temporary. In other words, really, they are not supposed to be there forever. Even if we do not want to change our law, we have got to change our law if we are signing on to this. That is how we read it. That is how—that is why I put these quotes right in my testimony. This is a very dramatic and different situation from the present one, where we can walk away from a ruling if we do not like it, as we already are doing. We are not changing our Marine Mammal Protection Act.

Senator EXON. I do not think it is quite fair to say this is not significantly different from our present GATT agreement that was the Tokyo Round.

Ms. Wallach, from my experience of my wife and my two daughters, I always like to give the women the last answer, so may I ask for your comment, and then I will not ask any further questions.

Ms. WALLACH. To answer directly your question of where the idea of the World Trade Organization came from, it was specifically—the original draft was produced by Canada. They had the cooperation of Europe, and there was actually a law review article floating around from 1989 or 1990 that talks about why a powerful new global trade organization is important to stop U.S. unilateralism, particularly the clout of section 301, and as well, as a smaller matter, the agricultural clout of section 22 sanctions.

Canada is one of the countries that has at least felt the threat of said unilateral measures, so that is where it came from. While the Uruguay Round negotiations went on for over 8 years, the World Trade Organization, previously known as the Multilateral Trade Organization, came up in the last 2 years, brought up by Canada with Europe's approval, and that is where it came from, to stop U.S. unilateralism.

Senator EXON. Was it Mr. Yeutter involved in that?

Ms. WALLACH. I cannot speak to his specific role. What I can tell you is that—

Senator EXON. I think he was. He is a Nebraskan.

Ms. WALLACH [continuing]. A core principle of World Trade Organization is to stop unilateralism, which gets to the point Senator Hollings has made about the section 301 provisions. There is a provision in the WTO text there, it has skipped around in the different drafts but it makes clear: no more U.S. acting on its own.

It just says it out flat, countries shall resort; that is, in GATT-ese "must use" the World Trade Organization's mechanisms, these multilateral mechanisms, to determine if there has been a trade violation, to determine how much of a violation and to set the time line to take any action. That language very directly constrains—as all of our trading partners know—and U.S. unilateralism, and that was the point of setting up this body.

As for the differences, which you have also asked, between the existing GATT contract—and this is the original thing in my hand only 80 pages. The fundamental difference is, this short GATT contract was brought to the Senate in 1947 attached to a thing called the International Trade Organization. The International Trade Organization was very similar to the World Trade Organization before Congress today. The GATT contract was supposed to be the substantive trade rules, plus the operating rules of a major new international organization in 1947.

However, the United States Senate said "No," to the ITO. Thus, the GATT never got approval as an organization, and as a result, it has operated by consensus. Why? Because it was never given independent political legitimacy or authority by way of political approval. Independent authority was never given the GATT by a vote of the sovereign nations to become members of it. As a result, in the absence of that approval for all of these years, it has worked like a contract.

Thus, GATT has worked solely on consensus, because it has no political legitimacy, and in fact the countries are called contracting parties, not "members." Like a contract, a country is only bound when it consents. Thus, each decision made by consensus becomes part of the contract, and then they are bound by it. But, nothing else. The GATT cannot make decisions or rules without all countries agreeing.

The huge difference is, the whole point of the Uruguay Round is to ask the Congress to do what they would not do back in the forties: approve a powerful international trade and commerce organization; shift the power from each sovereign to the organization, which under the WTO proposal would be given legal personality, the legal status of, say, the U.N. or World Bank, which this rejected International Trade Organization was supposed to have. The World Trade Organization would have political legitimacy and free-standing authority, which is where you get to this business of voting.

Under the World Trade Organization, its legal personality establishes a sovereign-like status. Countries are referred to as "members." The organization itself has certain decisional capacity for instance only a unanimous consensus of all members can stop the WTO's dispute tribunals from issuing judgments against any countries' laws or to stop sanctions. The organization has a power takes all 120-plus members to overrule. Plus, there is majority voting on some pretty important things.

For instance, the decision to start new negotiations is a simple majority vote, not consensus, as we have now under the GATT contract. Voting through this World Trade Organization, of which we are one member with one vote represents a fundamental power difference.

The shift of power from the sovereign, where power is held under the GATT contract, to this organization, is immense. And that kind of power is attached to incredibly intrusive, substantive rules that would preset what every country can and cannot do with its domestic policies. Compliance with all of these rules would be enforced in this powerful new body.

Senator EXON. I thank you. Mr. Chairman, I thank you for your patience. I really appreciate each one of you being here today, and it has been very helpful, and you have been very forthright, and I thank you for being here.

The CHAIRMAN. The committee is indebted to each of you, and we appreciate it very much.

The record will be open for any further questioning by the committee members and any other submissions that each of you four may want to submit.

Thank you very, very much.

The committee will be in recess subject to the call of the Chair.
[Whereupon, at 1:15 p.m., the committee adjourned.]

S. 2467, GATT IMPLEMENTING LEGISLATION

TUESDAY, OCTOBER 18, 1994

**U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.**

The committee met, pursuant to notice, at 10:00 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings, chairman of the committee, presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. The committee will please come to order. We are very fortunate this morning with our first panel who traveled under extreme circumstances to be with us, and have to attend classes.

We have Prof. Laurence Tribe from Harvard University Law School, and Prof. Bruce Ackerman from Yale University law school.

The record is open for a fuller introduction, but I think both of you gentlemen have graced the Congress on numerous occasions. You have tremendous credibility and to this committee are of tremendous assistance. Professor Tribe, we will start with you, sir.

STATEMENT OF LAURENCE TRIBE, PROFESSOR, HARVARD UNIVERSITY LAW SCHOOL

Professor TRIBE. Thank you very much, Mr. Chairman. I am honored to testify before this committee on the constitutional issues raised by the Uruguay Round of the General Agreement on Tariffs and Trade.

With the committee's permission, I would like my prepared statement simply to be entered into the record as if read.

The CHAIRMAN. Both statements will be included in their entirety, and you can highlight it as you wish or deliver it in full.

Professor TRIBE. I will not burden the committee with delivering it in full.

The CHAIRMAN. I did read your letter to the committee. I read Robert Bork's letter and then turned to your letters about midnight last night. I do not know how many pages, but it is a very profound treatment. Go right ahead, please.

Professor TRIBE. I trust it helped you fall asleep. [Laughter.]

I also would like to introduce two letters, one dated today and one dated August 9 by my very distinguished Harvard colleagues in public international law and in constitutional law, Prof. Anne-

Marie Slaughter, formerly of the University of Chicago, and Prof. Richard Parker, who has taught at Harvard Law School for some 20 years.

The CHAIRMAN. They will be included in the record.

[The information referred to follows:]

LETTER FROM MS. ANNE-MARIE SLAUGHTER, PROFESSOR OF LAW, HARVARD LAW SCHOOL

OCTOBER 18, 1994.

The Honorable ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR HOLLINGS: I understand that the Senate Committee on Commerce, Science, and Transportation is holding hearings on the implementing legislation for the Uruguay Round of the General Agreement on Tariffs and Trade. Among the issues to be considered is the submission of the Uruguay Round as an Executive-Congressional Agreement rather than as a treaty. I write to express my view that "treaty" is a defined term under the Constitution, and that either the Senate or the President may determine whether a particular international agreement is a treaty and thus must be concluded subject to the special safeguards that the Constitution sets forth to structure the treatymaking process. Conversely, both the President and the Senate must decide that a particular agreement does not qualify as a treaty in order to submit it as a Congressional-Executive agreement to both houses of Congress. In the case of the Uruguay Round Agreements, that decision should be made publicly and after careful deliberation.

As an international lawyer, a political scientist, and a citizen, I regard the Uruguay Round agreements, including the Charter of the World Trade Organization (WTO), as a historic achievement. These agreements achieve long-standing U.S. policy goals and impose the constraints not only on the United States but also on its fellow nations that are necessary to achieve those goals. Further, the dispute resolution provisions of the Uruguay Round constitute an important step toward a genuine international rule of law. A world trade order has been forty-five years in the making. To preserve the role of the United States as a leader in the creation, maintenance, and further construction of this order, the people of the United States should give their consent to the Uruguay Round agreements.

The question that I address below is how this consent should be manifested. The Uruguay Round agreements are the most recent and important addition to what John Jackson has described as a "constitution" for international trade relations.¹ It would be a sad irony if we violated the principles of our own constitution in subscribing to it.

I. THE TREATY CLAUSE DESIGNATES A SUBSTANTIVE CATEGORY OF INTERNATIONAL AGREEMENTS THAT MUST BE SUBMITTED TO THE SENATE FOR RATIFICATION BY A TWO-THIRDS MAJORITY

Article II, section 2, clause 2 of the Constitution (the Treaty Clause) provides that the President "shall have Power, by and with the Advice and Consent of the Senate, to make treaties, provided two thirds of the Senators present concur." This clause defines a substantive category of international agreements to which "the Senate must and does give its 'advice and consent.'"²

Any other construction would render the Treaty Clause meaningless. If a treaty could be any international agreement that the President chooses to designate as a treaty, the term could comprise an empty set, vitiating the Treaty Clause entirely, or it could encompass all agreements, rendering references to other types of international agreement in the Constitution meaningless. See article I, section 10, clause 3 ("No State shall, without the Consent of Congress, enter into any Agreement or Compact * * * with a foreign power"). Nor can a treaty be defined functionally, as whatever international agreement is ratified by two thirds of the Senate. Such a definition would render the Treaty Clause a truism: agreements that are ratified by two thirds of the Senate must be ratified by two thirds of the Senate.

¹ John Jackson, "The World Trading System: Law and Policy of International Economic Relations," 299 (1994).

² John Jackson, "The General Agreement on Tariffs and Trade in United States Domestic Law," 66 Mich. L. Rev. 249, 253 n. 20 (1967) (emphasis added).

The boundaries of the category of international agreements encompassed by the Treaty Clause, while imprecise, are nonetheless susceptible of definition as a matter of U.S. constitutional law. Nations enter into a wide range of international agreements, varying in terms of formality, duration, scope, and significance. International law does not distinguish between treaties and other types of International agreements, leaving such distinctions up to each nation as a matter of domestic law. International law does recognize, however, International agreements as the mechanism whereby nations agree to constrain their inherent sovereignty under international law. They voluntarily accept such constraints in reciprocal obligation with one another, obligations defined and applied in accordance with the international law of treaties.³

The definition of a treaty under UPS. domestic law must be undertaken in light of this generic function of international agreements. Professor Bruce Ackerman and Professor David Golove demonstrate in a forthcoming article in the *Harvard Law Review* that the Framers granted the Senate a "constitutional monopoly" on international agreements binding on the United States. They thus understood "treaty" to mean all agreements constraining U.S. sovereignty under international law. The question is what they understood U.S. sovereignty to mean.

In a constitutional democracy the Framers established, sovereignty lies with the people. The highest expression of this popular sovereignty is law-making authority, which is conferred by the people on both the state and the federal governments in accordance with state constitutions and the federal constitution. The degree to which an international agreement constrains this sovereignty, in turn, depends on the extent to which the provisions of such an agreement have a direct impact on matters normally regulated by state and federal legislative processes. Where an international agreement effectively supersedes or directly constrains ordinary state and federal law-making authority, the people have in effect agreed to delegate their sovereignty not to the state or federal governments, but to the federal government acting in concert with a foreign government or governments. Moreover, that delegation extends beyond the conclusion of any particular international agreement, as the content and scope of that agreement must be determined under international law in light of each government's interpretation of the reciprocal obligation accepted and imposed.

Such is the teaching of *Missouri v. Holland*, the leading Supreme Court decision on the nature and scope of the treaty-making power. 252 U.S. 416 (1920). The Court held that the President and the Senate could make a treaty regulating migratory birds, a matter reserved to the states under the prevailing interpretation of the Commerce Clause. The President and the Congress thus could not attain the objective of the treaty through the ordinary legislative process set forth under Article 1, section 8 of the Constitution; nevertheless, the Court held the treaty to be the supreme law of the land in accordance with the Treaty Clause and the supremacy clause of Article 6. It follows that the treaty power, when exercised in accordance with the provisions of the Constitution directly pertaining to the treaty power and the Bill of Rights, constitutes an alternative legislative process by which the President and the Senate may take "national action in concert with that of another power." *Missouri v. Holland*, 252 U.S. at 435; see also *Reid v. Covert*, 334 U.S. 1 (1957) (the treaty power is subject to the provisions of the Bill of Rights).

It is in this context that the special requirements of the Treaty Clause must be understood. The treaty-making process is an alternative legislative process to be carried out in conjunction with a foreign nation. The process involves both a delegation and a subsequent constraint on the sovereignty of the people of the United States under international law. It follows that the treaty-making process is hedged with special safeguards, requiring an unusual degree of deliberation and consensus. First, the people are represented as the source of both federal and state law-making authority by the President and the Senate. The Senate is accountable to the people as a whole, but also ensures the equal representation of the states, sovereign entities in their own right. Second, the Senate is assured participation in the negotiation as well as the ratification of a treaty, offering its advice prior to the conclusion of the agreement, at least as envisioned in the original constitutional scheme, and its consent after an agreement has been reached. Finally, the Senate must give its consent by a super-majority of two thirds, ensuring that the interests of the people and the states cannot be bargained away to a foreign nation by a simple majority.

The Framers insisted on these special safeguards for all international agreements that constrained U.S. sovereignty under international law. At the same time, however, they recognized the existence of other international agreements that did not qualify as treaties. The distinction between treaties and these other agreements lay

³Vienna Convention on the Law of Treaties, S. Exec. Doc. L., 92d Cong., 1st sess., 1971.

in the degree of constraint on U.S. sovereignty. Several sources of evidence support this proposition. First, the Constitution explicitly ranks treaties higher in importance than simple "agreements," prohibiting the states from making treaties but allowing them to enter into agreements or compacts with foreign powers with the consent of Congress. Article 1, section 10, clauses 1 and 2. Second, states are prohibited from entering into "any Treaty, Alliance, or Confederation," a sequence that denotes a progressive constraint on sovereignty, from a contractual constraint to a marriage to a partial dissolution of sovereignty. Article I, section 10, clause 1. Third, the Framers from the beginning recognized the Executive Power to encompass the power to conclude a limited category of "sole executive agreements."⁴ However, only "Treaties made * * * under the Authority of the United States" could bind the people as "the supreme Law of the Land." Article VI, section 2.

The Constitution thus establishes or at least implies a spectrum distinguishing between different types of international agreements in terms of the degree of their constraint on U.S. sovereignty—the sovereignty of the people expressed in the federal legislative authority and in the state legislative authorities. As the number and type of international agreements have proliferated, the Treaty Clause has come to embrace a relatively smaller part of this spectrum. Nevertheless, international agreements that directly and significantly constrain the law-making authority of the people of the United States must still be designated as treaties and submitted to the Senate for ratification by a two thirds majority of Senators present.

To aid in the process of distinguishing treaties from other international agreements based on this general principle, a number of more specific criteria can be identified:

- the degree of constraint on U.S. sovereignty. Is the international agreement intended to be binding? Does it entail a delegation of continuing legislative or interpretive authority to an international body?
- the scope of the constraint on U.S. sovereignty. To what extent does the international agreement constrain state and federal legislative processes regulating matters normally of domestic concern? Does the agreement constrain these processes on a one-time or ongoing basis? The degree to which a given international agreement penetrates the sovereignty of the United States to affect state as well as federal law is particularly important here, as state law remains the core of local governance.
- the duration of the constraint on U.S. sovereignty. Is the international agreement intended to bind the United States for a limited or indefinite time period?
- the solemnity and import of the agreement when viewed from the perspective of the international legal system. Does the agreement constitute part of the lasting architecture of the international legal order? Is it a foundation for further construction?

Taking into account these factors, it remains possible, if not always easy, to distinguish treaties from other types of international agreements. The Constitution demands no less. And as I shall discuss below, the Senate as well as the President is obligated to undertake this task.

II. THE SENATE HAS A CONSTITUTIONAL OBLIGATION TO DETERMINE WHETHER A PARTICULAR AGREEMENT QUALIFIES AS A TREATY

Although the category of international agreements that must be submitted to the Senate as treaties has a clearly definable core, the parameters of this category are admittedly imprecise. Room for considerable discretion thus exists in the decision as to how to designate any given international agreement. I suggest that the Constitution confers this decision on both the President and the Senate, such that if either decides that a particular agreement should be classified as a treaty, it must be so classified. Conversely, both the President and the Senate must agree that a particular agreement need not be treated as a treaty in order for it to be concluded either on the President's sole foreign affairs power or as a congressional-executive agreement. Where, as in the case of the Uruguay Round agreements, the international agreement in question bears virtually all the hallmarks of a treaty¹ the President and the Senate should make the determination as to the classification of this agreement publicly and with deliberation.

The Constitution establishes both the President and the Senate as the "treaty-makers."⁵ As discussed above, they exercise in tandem a special legislative power. Either can thus decide that a particular international agreement will have a suffi-

⁴ See Thomas M. Franck and Michael J. Glennon, "Foreign Relations and National Security Law," 280-81 (2d ed. 1993).

⁵ Louis Henkin, "The Constitution and Foreign Affairs," 127 (1st ed. 1972).

ciently direct and lasting impact on the people of the United States that the treaty process should be invoked.

Neither the President nor the Senate can shirk this obligation to determine whether a particular international agreement qualifies as a treaty. Although each can assert a constitutional prerogative against the other, demanding full participation in the decision-making process, both together exercise a constitutional responsibility with respect to the American people. In exercising this power, however, each branch enjoys a margin of discretion in the application of the specific criteria defining a treaty with regard to the specific agreement before it. As long as this discretion is not abused, a determination by either branch that a particular agreement qualifies as a treaty, or by both branches that a particular agreement does not qualify as a treaty, should be final.

In light of the magnitude of the constitutional responsibility exercised by the President and the Senate as "treaty-makers," as participants in an international legislative process that supersedes and constrains ordinary state and federal legislative processes, the determination as to whether a particular international agreement qualifies as a treaty should not be made sub silentio. In the instant case, my colleague Professor Laurence Tribe makes a compelling argument as to why the Uruguay Round agreements meet all the criteria for classification as a treaty. See Prepared Statement of Laurence H. Tribe Before the Senate Committee on Commerce, Science, and Transportation, October 18, 1994. In the face of such arguments, and in light of extensive public debate, both the President and the Senate owe the American people an explanation of their reasons for choosing to submit these agreements to both houses of Congress as an executive-congressional agreement. Alternatively, should the Senate conclude that it is impossible to undertake this task at this late stage in the legislative process, it should make clear in its deliberations on the Uruguay Round agreements that the constitutional status of those agreements remains an open question.

III. EVEN IF TREATMENT OF THE URUGUAY ROUND AGREEMENTS AS A CONGRESSIONAL-EXECUTIVE AGREEMENT IS CONSTITUTIONALLY JUSTIFIED, IT MAY UNDERMINE THE OBJECTIVES OF THESE AGREEMENTS ARE MEANT TO ACHIEVE

If the President and the Senate were formally to determine that the Uruguay Round agreements should be treated as a Congressional-Executive agreement, this determination might be constitutional, depending on the reasons given. However, such a determination risks bolstering domestic sovereignty at the expense of international order, thereby undermining the objectives that the Uruguay Round agreements are meant to achieve. I offer three reasons in support of this conclusion.

First, recent statements by the U.S. Special Trade Representative and certain provisions in the Uruguay Round Agreements Act, together with accompanying clarifications in the Administration's Statement of Administrative Action, suggest that the principal justification for concluding that the Uruguay Round agreements do not constrain U.S. sovereignty sufficiently to warrant consideration as a treaty rest on incipient disregard of our international legal obligations under those same agreements. Claims that the United States need not be bound by decisions of the new GATT Dispute Resolution Body (DSB), as adopted and applied by CATT members, together with provisions prohibiting the Executive or U.S. courts from relying on those decisions in determining whether the United States has violated its obligations under the Uruguay Round agreements, severely threaten the efficacy of the international legal system regulating world trade. The United States has fought for decades to strengthen that system, particularly its enforcement mechanisms, and has convinced our negotiating partners of our intent to accept its obligations as binding international law. To now purvey a very different and considerably weaker set of obligations to an American domestic audience serves chiefly to undermine our international credibility and to warrant our fellow contracting parties to take their obligations under the Uruguay Round agreements similarly lightly. The treaty-making process, by contrast, is designed to ensure an integrated rule of domestic and international law, by requiring that constraints on U.S. sovereignty be carefully considered and freely adopted in good faith.

Second, an over-emphasis on the obstacles posed by the treaty-making process overlooks the benefits it confers, not only for the United States and its negotiating partners, but for the long-term stability and strength of the international system. The requirement of two thirds consent is a hurdle, but also a bulwark. It offers assurance to our treaty partners of the strength and endurance of our commitment. This was the theory behind President Roosevelt's careful nurturing of a bipartisan foreign policy after World War II, the policy that resulted in the conclusion of treaties such as the U.N. Charter and the North Atlantic Alliance. These treaties com-

mitted the United States to permanent participation in the building and maintaining of a genuine international order. They were commitments that entailed important constraints on U.S. sovereignty, with a direct impact on the people of the United States. The International Trade Organization, in its original incarnation, was to be the keystone of a new international economic order, encompassing far more than simple agreements to cut tariffs. The present WTO is a major step toward fulfillment of that original vision. Its place in the international legal system merits a similarly unified and solemn expression of adherence.

Third, the experience of the European Union demonstrates that accepting constraints on sovereignty "by the backdoor," with a disingenuous refusal to acknowledge their full extent either to legislators or to the public, can backfire. Steady progress toward an open market through an increasingly strong set of supranational institutions, but without full publicity and participation by domestic law-making authorities in accordance with their respective constitutions, has given rise to widespread public perception of a "democracy deficit." Having failed to bring their publics along with them, many of the executives of the Union's member states found themselves barely able to muster the necessary legislative or public support to achieve the next step in the construction of the Union, embodied in the Maastricht Treaty.

The European Union is a far more comprehensive institution than the world trading system under the Uruguay Round agreements. Nevertheless, the Union began and has largely been completed as a set of progressively liberal trade agreements. Much of its power as an integrated legal system was forged by the European Court of Justice and the European Commission as autonomous supranational authorities, dedicated to the free movement of goods and services. There is every reason to expect that the WTO secretariat and the DSB will similarly construct a genuine supranational rule of law, with binding effect. The resulting system will have great benefits for the certainty and predictability of international trade rules, aiding commerce and consumers alike in all the countries of the WTO. But as in the European Union, and as we see already emerging in the United States, individual and state voices must also be heard in this system, beginning with its initial construction. The treaty-making process is the best way to ensure that those voices are fully represented, with lasting benefits for the nation and the world.

In conclusion, constitutionalism is an international as well as a domestic value. The Constitution mandates special safeguards for the conclusion of international agreements with direct, significant, and lasting constraints on U.S. sovereignty. These safeguards cannot be circumvented by semantic sleight-of-hand. If the Uruguay Round agreements qualify as a treaty, they must be passed as a treaty. The Senate should give its full attention to that question, in the best interests of both the domestic and the international rule of law.

Sincerely,

ANNE-MARIE SLAUGHTER,
Professor of Law.

Professor TRIBE. Let me begin by saying that I recognize the profound importance of foreign commerce to the welfare of this country, and that as a strong supporter of President Clinton I am inclined to trust his determination that this new agreement will yield tremendous benefits for our economy.

But I am not here to discuss whether participation in the World Trade Organization is a good or a bad idea. Rather, I am here to discuss what I think the United States of America is more fundamentally about, which is not just economic success but democratic self-government within the context of the enormously important framework of the U.S. Constitution.

One of the bedrocks of our form of Government is that much of our Federal structure is firmly established in the Constitution's text, and it is my view that the structural commands of that text may not be ignored unless they are formally amended in accord with article V.

Recognizing the special safeguards that should protect the American people whenever their sovereign fate, their mode of self-government, is linked to the decisions of foreign governments, the Con-

stitution provides that certain agreements with foreign nations, agreements that the Constitution calls treaties, may be made only with the advice and consent of the Senate, subject to approval by two-thirds of the Senators present.

The Constitution explicitly recognizes that not all international agreements constitute treaties. For example, article I permits the States, with the approval of Congress, to make agreements and compacts with foreign countries, but it expressly forbids any State to make a treaty with a foreign country, even with Congress' consent.

Now, the only way to make constitutional sense of that distinction is to recognize first of all that in the contemplation of the Constitution, treaties are a distinct category, and to recognize further that in the eyes of the Constitution a treaty is an international arrangement in which we do more than simply strike a one-time bargain with a foreign country, as in the Iran hostage settlement, for example, and more than simply help to set up a multinational agency like the IMF or the World Bank, but in which instead we relinquish a significant aspect of our ongoing self-determination to another nation or group of nations, as in a mutual defense pact or in an agreement to conform our future lawmaking activities to an international body's mandates.

The leading Supreme Court decision on treaties, *Missouri v. Holland*, made clear in 1920 that the treaty power and Congress' legislative power under article I are not coextensive. In that case, the Court held that the Constitution permitted the President and Senate in a treaty with Canada to accomplish an alteration in the then-existing relationship between Congress' lawmaking powers and the reserved rights of the States; an alteration that the Court held could not have been accomplished by the President and a mere majority of the House and Senate. So, it is that article II, section 2, clause 2, the treaty clause, is not just an option that the President in a bicameral majority may circumvent at will.

There is a further textual argument for this view. The same paragraph of the Constitution that contains the treaty clause also provides for the advice and consent of the Senate for certain Federal appointments. Now I submit that no one imagines that the Senate would give up its advice and consent power for Supreme Court Justices or Cabinet Members just because an act of Congress was bold enough to provide an alternative mode of confirmation under, for example, the necessary and proper clause.

So, the text is plain, and what the text of the treaty clause will not permit cannot be validated by so-called congressional precedent. The Supreme Court in 1983 was willing to invalidate the legislative veto in the *Chadha* case, even though provisions of that kind had been inserted in hundreds of statutes since 1932. The Court has repeatedly stressed, and I think rightly so, that congressional precedent provides a persuasive argument for the constitutionality of a practice only when that practice extends to the Nation's earliest days under the Constitution.

It is not surprising, therefore, that scholars opposed to the preservation of the special treaty role of the Senate have tried on a number of occasions to prove somehow that, from the Nation's founding, Executive agreements, coupled with bicameral congress-

sional approval, were understood to be complete substitutes for treaties ratified by the Senate, despite the text of the Constitution. The Office of Legal Counsel in the Department of Justice relied on that scholarship, which dates back to the 1930's and 1940's, in its memorandum dated this July 29 responding to the views I had expressed in an earlier letter to Senator Byrd. But I must say that the scholarship invoked by the Department of Justice, with all respect, is nothing more than clever historical revisionism.

In a forthcoming article in the *Harvard Law Review*, Professor Ackerman who is sitting to my left and who will testify after I do—and who does not agree with my bottom line I should add—persuasively debunks the myth that all of that scholarship created. I think he convincingly proves that before World War II, at least, everyone assumed that the constitutional text meant what it said about treaties, and he concludes that congressional-Executive agreements like NAFTA or the Uruguay Round could not possibly have escaped Senate ratification on a treaty track for at least the first 160 or 165 years of our Nation's history.

I should add—and I would be glad to go into detail if the committee wants—that I have examined all of the Supreme Court precedents that are supposedly some support for an alternative view, and I must say there are no Supreme Court cases—none—that support the proposition that Congress' bicameral approval of an executive agreement automatically suffices as an alternative to the treaty procedure.

To circumvent the treaty clause when approving in particular the WTO agreement, the agreement creating a World Trade Organization pursuant to the Uruguay Round, would in my view require nothing less than arguing the treaty clause into oblivion because the undeniable fact is that the WTO agreement would significantly affect the lawmaking sovereignty both of the United States as a national polity, and of the 50 sovereign States that comprise the United States.

The WTO agreement unambiguously says in article 16, paragraph 4, and I quote, "Each member shall ensure the conformity of its laws, regulations, and administrative procedures with its obligations as provided in the GATT."

This seems to me as unmistakable an international commitment as I can imagine henceforth to make and enforce all our laws, Federal, State, and local not in accord with our free choice but in subordination to a newly supreme world order.

Now, please do not get me wrong. Unlike some people, I do not think that is necessarily a bad thing. I do think it necessarily makes the WTO agreement a treaty.

The basic response of the U.S. Trade Representative has been consistent. He has said that the implementing legislation that we are asking Congress to approve would leave us some "wiggle room." The rulings of the WTO, striking down our nonconforming laws, would not automatically take effect within the United States.

Let me say it bluntly. That is no answer at all. First, it amounts to an assurance that we might just decide to violate our solemn commitments under the WTO agreement. Well, what kind of argument is that? If that kind of reply could justify circumventing the treaty clause, then it seems to me the only thing that would count

as a treaty would be a pact in which the United States solemnly turned over all of its military power to a foreign body that could then simply force us to do its bidding. But clearly the treaty clause encompasses vastly more than that.

Second, the USTR's answer ignores completely the way in which the new WTO would operate. It is true that WTO decisions would not automatically take effect domestically to invalidate U.S. laws found by a WTO panel to violate GATT. But any member of the WTO that persuades one of its panels that U.S. Federal or State law violates GATT would be legally entitled under the Uruguay Round's WTO agreement to impose perpetual trade sanctions against the entire United States or against any industrial sector, unless those of the WTO's 115-plus who are parties to the relevant agreement members were to agree unanimously to waive all such sanctions.

Now, I listened to the testimony yesterday in which, Mr. Chairman, you asked about whether the United States had a veto over such sanctions. I listened to Mr. Brinza of the USTR when he suggested to you that if you just had read it more carefully you might have gotten a different impression.

I read it last night again and I assure you, Mr. Chairman, you read it with sufficient care. If you look at article 22, paragraph 6, article 17, paragraph 14, and article 16, paragraph 4 of the dispute resolution understanding of the WTO agreement, it becomes absolutely clear that for the first time in history in an international organization with sanction—imposing powers the United States would have no veto over any sanction imposed by a WTO panel.

More than that, Mr. Chairman, you referred to majority voting, one-nation-one-vote. It is worse than that, Mr. Chairman. Even if the United States persuaded all but one of the other party nations to oppose anti-U.S. sanctions that had been imposed by a WTO panel, the United States would lose.

It is on these special matters, matters of the dispute settlement body, that articles 16, 17, and 22 explicitly define "consensus." It is a kind of converse notion from what you would expect. This is not forthrightly written, but there is no doubt about what it means. Absent unanimity against the imposition of sanctions, we lose.

Now, that provides a particularly potent weapon in the case of a GATT-illegal State law because it can set States against one another in an uncanny reenactment of the sad state of affairs that prevailed under the Articles of Confederation, whose internecine trade wars were, as of course you know, largely responsible for the historic decision in Philadelphia to propose a new Constitution in 1787.

The increased vulnerability of the States to action by the WTO is compounded by how differently the Uruguay Round treats State laws and Federal laws. And again the language, though not artful, is absolutely unambiguous.

When a Federal rather than State law is declared illegal by the WTO, it is the U.S. Congress that retains the final word as to the law's domestic status. Congress may either revise or repeal the law, or keep the law in place and accept trade sanctions which can continue as long as the offending law remains in effect. In other words, even if the law is not repealed or preempted by Congress,

overturned by this body, the United States is not home free; it suffers sanctions. But it is up to Congress.

On the other hand, it is the executive branch, not Congress, that determines the fate of State laws found to be illegal under GATT. If a State chooses not to alter a measure found by the WTO to be GATT-illegal, the U.S. Trade Representative may choose, after consulting with that State, to bring an action against the State in Federal court even if Congress has chosen to allow the State's measure to remain in effect, and chosen to accept trade sanctions on behalf of the entire Nation rather than preempt the offending State law.

Now, let me stress that, even if the Trade Representative were to decide not to sue a State whose duly enacted laws a panel of the WTO had condemned under GATT, the State would be under enormous pressure to revise those laws. It is very small consolation for a State whose laws have triggered cross-sectoral retaliation against its sister States to be told, "You do not have to worry. After all, the decision of the WTO panel will not, under section 102(b) of the implementing legislation, take legal effect in the United States." That is not really a very serious consolation.

Imagine a regime in which a foreign tribunal could find an American citizen guilty in absentia of conduct inimical to world trade. How much solace would that citizen receive from an assurance that the tribunal could not actually compel the citizen to alter the offending conduct or throw him in jail, but could only retaliate with heavy sanctions against the citizen's sisters and brothers? That is what this agreement does.

Writing to me last Friday, on behalf of President Clinton, Ambassador Michael Kantor responded to this concern. He argued, and I quote, "in the absence of the GATT or WTO, foreign countries would be perfectly free to impose tariffs or other restrictions on U.S. exports—even if the express purpose were to prompt a change in State or Federal law."

I do not think, Mr. Chairman and members of the committee, that that is an answer. I have heard it a number of times now. It is a recurring theme: "You worry about retaliation. That could happen now." But let me explain quite simply why that answer does not work.

Without the Uruguay Round's explicit authorization of retaliatory tariffs by a country that has obtained a WTO ruling against us, any effort by one of our trading partners to retaliate against us would ordinarily be deterred under existing law by the threat that, if they did, we would retaliate under Section 301 of the Trade Act. But if and when the Uruguay Round becomes law, it would violate international law under the GATT for us to throw our weight around in that way. We cannot retaliate against perpetual, cross-sectoral sanctions that are themselves explicitly authorized by the World Trade Organization agreement that we have signed.

Now, even apart from these concerns about State sovereignty, I would continue to regard the WTO agreement as a treaty within the meaning of the Constitution. State sovereignty is a major value protected by the treaty clause, but it is only one of the values that that clause protects.

As my colleague Prof. Anne-Marie Slaughter explains in the letter that she sent today to the chairman of this committee, and that

is now in the record, the treaty clause's provision for supermajority approval is an independent guarantee of especially serious deliberation and especially strong national consensus for those international agreements that significantly constrain American sovereignty by seriously implicating normal State or Federal lawmaking processes. It seems plain to me that the characteristics of the WTO agreement plainly qualify it as the sort of agreement that Professor Slaughter is talking about, one that warrants a high degree of consensus and solemnity.

I do not pretend to offer the committee an airtight set of criteria for defining the boundary between treaties and other international agreements. But I think it is plain that whatever the exact contours of that category might be, an agreement warrants the high level of consensus mandated by the treaty clause if it, No. 1, creates a governing entity outside the United States with legal powers capable of directly affecting the lives of all of our citizens by affecting State and Federal lawmaking efforts.

No. 2, provides for ongoing, and not simply temporary, cooperation and reciprocal commitments among over 120 nations.

No. 3, accepts as lawful the realistic possibility of the United States being subjected to substantial international sanctions against which the United States is not allowed to retaliate without placing itself in violation of the agreement.

And No. 4, for all these reasons, contemplates wide-reaching effects on the legal, economic, and political life of every State.

I must say, the very idea that the creation of a World Trade Organization—an international governance body with real powers over the United States, whose sanction decisions against the United States we cannot veto—the very idea that that would not require approval as a treaty is frankly mindboggling.

By declining to consider the Uruguay Round as a treaty, the Senate would be giving powerful ammunition to those who want to argue that the treaty clause has basically been amended out of the Constitution; that the President need not worry about its requirements ever again; and, most ominous of all, that any other element of the Constitution's architecture that comes to be seen by enough elites as an annoyance in the modern world can be obliterated by sufficiently dramatic and persistent defiance without troubling to amend the Constitution.

Now, I am not a utopian here. I realize that as a political matter it may appear to be too late in the game, now that both Houses have scheduled "lame duck" sessions to vote up or down on the Uruguay Round, for the Senate suddenly to reclaim its constitutional role and insist that the WTO agreement be approved, if at all, by supermajority vote.

But regardless of your views on the merits of this treaty—and I will call it that unashamedly—or on the possibility of an 11th-hour reassessment of the Senate's role, the very real prospect that the Senate's abdication of its treaty clause responsibilities with respect to the Uruguay Round will be seen as further precedent for the wholesale gutting of the treaty clause should give the Senate pause.

When the Senate and House reconvene this November for the "lame duck" sessions and scheduled vote on the Uruguay Round,

almost 50 years to the day will have passed since the House Judiciary Committee in November 1944, also in a "lame duck" session, held hearings on the treaty clause.

That December, the Judiciary Committee reported a proposed constitutional amendment that would have replaced ratification by two-thirds of the Senate with ratification by a mere majority of both Houses. As we all know, that amendment did not pass, although it scared the Senate into inactivity for a while.

I wonder if it would be too much to expect the "lame duck" sessions scheduled for this November to revisit the treaty clause and to confront forthrightly the question, should it be scrapped as the House Judiciary Committee proposed 50 years ago, or should it be reinforced by the development of guidelines for those international agreements that so affect our lawmaking structures, and therefore our basic sovereignty, as to trigger the supermajority safeguards that the treaty clause has provided from the founding of our Republic?

Now, I know that the WTO and the Uruguay Round are massively important. I am uncomfortable opposing a President that I support. And I do not oppose him on the merits; it is just something called the Constitution that gives me pause. And I must say that my position on this issue, especially when I am quoted by Pat Buchanan and by a number of others—sometimes I think holding their noses—has bewildered a number of my friends.

One prominent professor of international and constitutional law seemed to agree with my legal analysis, but he was puzzled that I would take a position so opposed to the priorities of a President that I strongly support. And he wondered, what could possibly motivate me to urge a procedural hurdle for a measure that I think I substantively support? I was surprised by that conversation, although maybe I should not have been, and I was saddened that I should be asked by a fellow law professor to justify my concern for the Constitution.

It is my hope that Senators who have taken an oath to support the Constitution will not find my concerns odd, but will agree with me that the structural provisions of the Constitution must be viewed as more than inconveniences to be ignored when the economic gains or the habits of the era make those hurdles seem too quaint or too costly to take seriously.

The constitutional structure embodies protections dearly fought for and won at enormous price. When the Senate properly fulfills its treaty clause responsibilities, I believe it is doing no less than upholding our constitutional form of Government.

Thank you.

[The prepared statement of Professor Tribe follows:]

PREPARED STATEMENT OF PROF. LAURENCE H. TRIBE

I am honored to testify before this Committee on the constitutional issues raised by the Senate's consideration of the Uruguay Round of the General Agreement on Tariffs and Trade (Uruguay Round) as a congressional-executive agreement, rather than as a treaty.

I first made known my views on this question on July 19, 1994, when I wrote a letter to Senator Robert Byrd advising him that the many historic and economically advantageous changes the Uruguay Round promises to effect would nevertheless entail such substantial shifts in state sovereignty that the agreement should be subject to Senate ratification as a treaty. On September 12, 1994, I expressed

these same concerns in a letter to President Clinton, in which I provided a fuller explanation of why the establishment of the World Trade Organization (WTO), with its unprecedented Dispute Settlement Body (DSB), would so alter the dynamics of state and federal relations that ratification by two-thirds of Senators present was necessary, given the Senate's unique role as the only national institution that represents the states as equal and separate political units. I later supplemented these letters with a lengthier memorandum dated October 5, 1994, to Assistant Attorney General Walter Dellinger, White House Counsel Abner Mikva, and Senators George Mitchell and Robert Dole. In that memorandum, I voiced broader concerns about the implications of ignoring the clear textual command of the Constitution's Treaty Clause.

Although I do not pretend to be an expert on the impact that the Uruguay Round will have on international trade, I recognize the profound importance of foreign commerce to American welfare and, as a strong supporter of President Clinton, I am inclined to trust his determination that this new agreement will yield tremendous advantages for the American economy, in part by effecting a massive reduction in the burdens imposed by foreign tariffs, which operate as taxes on American consumers. But I am not here today to discuss whether participation in the World Trade Organization is a good idea, weighing both its net dollar benefits and its possible dangers to consumer safety, environmental protection, and various labor interests. Instead, I am here to address what the United States of America is more fundamentally about, which is not just economic success, but democratic self-government within the context of an enormously important document, the Constitution of the United States.

My concern is with basic constitutional values apart from any gains in trade—constitutional values that are beyond price. I find profoundly troubling the notion that, in the process of governing the American people, national leaders would consider the Constitution only as an afterthought. So it was during the last few months that the more I learned about the Uruguay Round and the proposed World Trade Organization, the more dismayed I became at many leaders' apparent disregard for the Treaty Clause of the Constitution. No matter how momentous an issue or initiative may be, the importance of adhering to the Constitution is something that we cannot afford to take lightly. Indeed, the very importance of the Uruguay Round and the significant international commitments it represents call for the solemn requirements and rigors of the Treaty Clause, regardless of any accompanying inconvenience.

I do not testify as an opponent of the Uruguay Round or of the World Trade Organization, and I do not speak for any client or interest group.¹ I speak, rather, as a student and proponent of constitutional government. One of the bedrocks of our constitutional form of government is that much of our federal structure is firmly established in the text of the Constitution. The structural commands of the Constitution may be neither ignored nor changed outside the precise limitations of Article V, through which the Constitution may be amended. This foundational principle is a self-conscious limitation that We the People have placed upon ourselves. This principle means that our government will not always be the most efficient, or the most effective in a utilitarian sense. But for the price of occasional inefficiency, We the People gain security in the knowledge that the government will function according to pre-established rules. It is only when we can trust that the government will operate within legal, constitutional bounds that we can feel secure in our treasured rights and freedoms.

My testimony today thus consists of a defense of the continued viability of the Treaty Clause, an argument that the Uruguay Round qualifies as a treaty and should be subject to approval by two-thirds of Senators present, and a strong suggestion that the Senate seriously explore the constitutional requirements of the Treaty Clause and establish principled guidelines for determining which types of international agreements ought properly to be considered as treaties in the future.

¹After I agreed to testify before this Committee, I was retained as counsel by Pacific Bell, which filed an Emergency Motion for Reconsideration after a panel of the United States Court of Appeals for the District of Columbia Circuit vacated a prior order expediting appeal in *American Personal Communications v. FCC*, No. 94-1549 (Oct. 6, 1994). The court decided to hold the case in abeyance apparently because rider provisions substantively unrelated to the Uruguay Round but nevertheless included with the implementing legislation would have awarded certain pioneer preferences that were at issue in the case. As my letters of July 19, September 12, and October 5, 1994, make clear, I had expressed my views regarding the Uruguay Round before the D.C. Circuit's surprising ruling on October 6, 1994, and before I filed the Emergency Motion on Pacific Bell's behalf. My testimony here today does not concern the pioneer preference rider provisions.

I. THE REQUIREMENTS OF THE TREATY CLAUSE

Although it is remarkable that such basic constitutional arguments need even be made, I begin by defending the view that the Constitution provides that certain agreements with foreign nations may be entered into only "with the Advice and Consent of the Senate," culminating in approval by two-thirds of those Senators present. U. S. Const., Art. II, § 2, cl. 2. Contrary to the claims of some scholars and political leaders, the Constitution's requirement of Senate supermajority approval of treaties is not simply an alternative procedure to be followed only if the President and Senate find it expedient to do so. Rather, the Treaty Clause provides an exclusive procedure for treaty approval.

The Constitution certainly does not mandate that all international agreements be subject to the requirements of the Treaty Clause. The Constitution uses an array of terms to describe a variety of international agreements, including "Agreement[s]," "Compact[s]," and "Treat[ies]." Art. I, § 10, cl. 1, 3. The Constitution makes absolutely clear that these are not completely interchangeable terms, but represent discrete categories of agreements subject to distinct constitutional requirements. For example, although each of the fifty states may, with congressional approval, enter into "agreements" and "compacts" with foreign countries, see Art. I, § 10, cl. 3, no state may enter a "treaty" with a foreign nation under any circumstances, see Art. I, § 10, cl. 1. The federal government, however, may enter into treaties—but only with the advice of the Senate and the consent of two-thirds of Senators present. See Art. 2, § 2, cl. 2.

In countering the claims of those who argue that congressional-executive agreements and treaties are wholly interchangeable, I find support in a variety of sources:

- In the leading Supreme Court case on treaties, *Missouri v. Holland*, 252 U.S. 416 (1920), the Court made clear—as everyone understands—that the treaty power and Congress's legislative power are not coextensive. The Constitution permits treaties to accomplish things that cannot be achieved through mere legislation. See id. at 433. It necessarily follows that the treaty form and the congressional-executive agreement are not wholly interchangeable.

- The United States Supreme Court has noted that, "[u]nder the Constitution * * * the word 'treaty' has a far more restrictive meaning" than it does under international law, *Weinberger v. Rossi*, 456 U.S. 25, 29 (1982), and has spoken of agreements "possessing the dignity of one requiring ratification by the Senate," *B. Altman & Co. v. United States*, 224 U.S. 583, 601 (1912) (emphasis added).

- Controversy over the Senate Foreign Relations Committee's one-time insistence that the term "treaties" in the Vienna Convention on the Law of Treaties be equated with the constitutional treaty category has been a primary reason for the Senate's failure to approve the Convention. See id. at 146 n.4.

- The notes to the Restatement (3d) of Foreign Relations Law of the United States indicate that United States law differs from international law in that, under United States law, "treaties" constitute one category of international agreement that constitutionally requires a particular process and has a particular status." Introductory Note, International Agreements, 1 Restatement (3d) of Foreign Relations Law of the United States 146 (1987).

- The State Department has issued guidelines for deciding whether a particular agreement should properly be negotiated and approved as a treaty. See 11 Foreign Affairs Manual, Chapter 700, § 721.3 (codifying State Department Circular 175, December 13, 1955, as amended).

All these sources support a conclusion that should be obvious from the mere existence of the Treaty Clause: the content and import of certain international agreements require that they be approved by two-thirds of Senators present. (I will discuss below the problem of identifying whether a particular agreement should properly be classified as a treaty. While such a determination may at times pose a close question, the Uruguay Round clearly must be considered a treaty if the category is to have any content at all.)

Since there is a constitutional category of agreements that must be deemed treaties, any agreement falling within that category must be approved according to the provisions of the Treaty Clause. Although some have claimed that the Treaty Clause provides only one of several alternative routes for the approval of such international agreements, both the Constitution's text and its structure argue strongly against such a hazardous approach to reading the Constitution.

The paragraph of the Constitution that contains the Treaty Clause provides for the "Advice and Consent of the Senate" for both treaty-making and certain federal appointments, but there is a striking and telling difference between the Treaty Clause and the adjacent Appointments Clause, for only the Appointments Clause

permits alternative consent procedures. See Art. II, §2, cl. 2. The Appointments Clause provides for Senate majority approval of both principal and inferior officers, but specifically allows Congress to remove the requirement of Senate approval for inferior officers. The Supreme Court's interpretation of the Appointments Clause makes clear that the Constitution's senatorial advice and consent requirement may be replaced with alternative approval methods only where the Constitution specifically so provides. Principal officers, for example, must be confirmed by the Senate, even though the phrase of the Constitution providing for Senate confirmation does not include the word "only." See *Weiss v. United States*, 114 S. Ct. 752, 767 (1994) (Souter, J., concurring). It is inconceivable that the Constitution would permit or the Senate would agree to the Senate's surrender of its unique role in confirming Supreme Court Justices, for example, to allow the House of Representatives alone or perhaps even a committee of the House or Senate to confirm or reject presidential appointments of Supreme Court Justices. The Constitution's affirmative grant of permission to Congress to alter the procedures for appointing inferior officers indicates that the Constitution is explicit when prescribed methods of confirmation or approval are not exclusive. The Treaty Clause's provision for Senate treaty ratification by supermajority must thus be understood as exclusive.

Some have argued, however, that Congress's broad powers under the Interstate and Foreign Commerce Clause and the Necessary and Proper Clause provide ample authority for the use of congressional executive agreements to effect any change that a treaty might accomplish. This argument is flawed for two basic reasons. First, it begs the central question at issue here. The Necessary and Proper Clause authorizes Congress "[t]o make all Laws" necessary to execute its powers, but does not mention treaties. Art. I, §8, cl. 18. The Necessary and Proper Clause, then, cannot be read to authorize bicameral legislative adoption of measures that properly fall within the Constitution's "treaty" category. Second, the function of the Necessary and Proper Clause, which extends congressional power over all fields fairly related to Congress's enumerated powers, does not speak at all to the structural or procedural requirements for passage of measures. In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court's historic decision to invalidate federal legislative veto provisions, the Court made clear that Congress may not abandon the Constitution's prescribed structural and procedural requirements even to regulate a field properly within the legislative power of Congress. The Necessary and Proper Clause no more provides a circuitous route for the approval of treaties than it authorizes a legislative veto in violation of the Constitution's requirements of bicameralism and presentment.

The contrary view of the Necessary and Proper Clause would yield a clearly unacceptable conclusion in the context of the Appointments Clause, which is the next-door neighbor of the Treaty Clause in Article II, section 2, clause 2. If, for example, Congress thought it wise for the House of Representatives, say, to appoint the Secretaries of Commerce and the Interior rather than to have the President make those appointments, Congress could simply link its power under the Necessary and Proper Clause with its power under the Interstate Commerce Clause to provide that this alternative method of appointment—namely, appointment by the House (perhaps with approval by the Senate)—would be fitting and proper for these two Cabinet officers in light of the central role their departments play in administering congressional legislation affecting interstate commerce. The Appointments Clause, after all, only says that the President "shall appoint * * * Officers of the United States" subject to certain constraints; it nowhere says that all such officers must be appointed by the President in all circumstances, and that no alternative mode of appointment may be legislated pursuant to Congress's other powers. The obvious unacceptability of this line of argument regarding the Appointments Clause underscores the erroneous character of the precisely parallel line of argument with respect to the Treaty Clause.

What the text of the Treaty Clause will not permit cannot be validated by so-called congressional "precedent." The *Chadha* case provides strong support for the proposition that congressional practice alone cannot justify abandonment of the Constitution's structural provisions. The Supreme Court was willing to invalidate the legislative veto in *Chadha* even though such provisions had been inserted in hundreds of statutes since 1932. As the Supreme Court has often recognized, congressional "precedent" is most persuasive as an argument for the constitutionality of a practice when the practice extends back to our nation's earliest days under the Constitution. See, e.g., *Field v. Clark*, 143 U.S. 649, 683 (1892). Late-breaking developments, however, can easily be signs of unconstitutional innovation. Indeed, Professor Bruce Ackerman of Yale University, who will testify here today following my remarks, will argue in a forthcoming article in the *Harvard Law Review* that the adoption of important congressional-executive agreements after World War II was

part of a "constitutional transformation." Despite the attempts of some in the 1930s and 1940s to demonstrate that other forms of international agreement had been interchangeable with the treaty form since the early days of our Republic, Professor Ackerman and Professor David Golove of the University of Arizona demonstrate that the widespread use of the congressional-executive agreement for certain types of accords represented an important shift in national practice.

The current controversy over the Uruguay Round, then, is not the first occasion in our nation's history when debate over approval of a particular international agreement overlapped with debate over the Treaty Clause. Over half a century ago, prominent scholars crafted boldly revisionist histories that are often cited as proof that, from the nation's founding, executive agreements, coupled with bicameral congressional approval, were available as substitutes for formal treaties ratified by the Senate. But Professor Ackerman's forthcoming article convincingly debunks the myth that those scholars had invented—the myth that it was always recognized that any international agreement negotiated by the President, regardless of its nature and sweep, could escape the requirement of Senate ratification as a treaty. Similarly, the Supreme Court cases that are sometimes trotted out for the proposition that any executive agreement can become "the supreme Law of the Land" through majority approval of the House and Senate in fact establish no such thing—as I have elaborated elsewhere and as Professor Ackerman has established in his forthcoming article. These cases often deal with the very different issues of unilateral presidential settlement or suspension of claims against foreign nations, see, e.g., *United States v. Pink*, 135 U.S. 203 (1942); *United States v. Belmont*, 301 U.S. 324 (1937), or proclamation statutes, by which Congress authorizes the President to take certain actions upon making particular findings, see, e.g., *United States v. Curtis-Wright*, 299 U.S. 304 (1936); *Field v. Clark*, 143 U.S. 649 (1892). The Supreme Court has never addressed directly the constitutionality of using the congressional-executive agreement to deal with matters that fall within the Constitution's "treaty" category. On the contrary, as Professor Ackerman's scholarship establishes, at least prior to World War II, there really was no congressional or Supreme Court precedent for any attempt to read the Treaty Clause as purely optional and to regard congressionally approved executive agreements as fully interchangeable with Senate-ratified treaties.

Indeed, in the aftermath of World War II, with memories of the demise of the League of Nations still fresh in national memory, there was considerable concern that the requirements of the Treaty Clause might be an impediment to the establishment of world peace. In this context, the House of Representatives approved a proposed constitutional amendment that provided for treaty approval by majority vote in both houses. As the Senate sought to maintain its distinctive constitutional role, the Executive Branch engineered a compromise by submitting the Bretton Woods Agreement establishing the World Bank and the International Monetary Fund as a congressional-executive agreement and submitting the more important United Nations Charter as a treaty. After the Senate gave in with respect to Bretton Woods, efforts to amend the Constitution's Treaty Clause faded. Nevertheless, the Senate's acquiescence regarding such a prominent international agreement as Bretton Woods could always be looked to as an excuse not to submit the next significant international agreement as a treaty.

There is an important lesson to be learned from this piece of history. Because the Senate essentially ducked the Treaty Clause issue with respect to Bretton Woods, it opened the door to complete evisceration of the Treaty Clause altogether. The Uruguay Round presents the Senate with an opportunity either to repeat or to avoid the mistakes of the past. If political considerations lead the Senate to abdicate its constitutional role "just this once," its practice with regard to an agreement whose ardent supporters call the most significant international trade agreement ever will forever be cited as support for the proposition that no treaty need be submitted for supermajority approval by the Senate. The issue may seem practically unimportant to some Senators now that the Presidency and both Houses of Congress are controlled by the same political party. But as the balance of political power shifts throughout our nation's history, it is the Constitution's structural framework that best protects our most enduring national values.

During the past half-century, Presidents and Congress have alternated between the two forms of international agreements in an unprincipled manner. The Senate's earliest prominent acquiescence in the congressional-executive agreement procedure in the 1940s was a political move in response to hostile public opinion and House approval of a proposed constitutional amendment that would have removed the Senate's sole ratification power completely. In the decades that followed, political convenience rather than constitutional commitment characterized presidential and congressional preference for the congressional-executive agreement. But it is not the

prerogative of those who temporarily hold public office to abdicate structural constitutional protections—and, of course, it is not within their power thereby to bind the nation for all time by such abdication.

The Constitution does not permit the Senate simply to abandon its constitutional role. The Supreme Court has recently made clear that, where the Constitution provides a structural framework for particular government decisions, government leaders must adhere to that framework. As the Supreme Court has explained regarding the Treaty Clause's companion provision: "The structural interests protected by the Appointments Clause are not those of any one Branch of government but of the entire Republic." *Freytag v. Comm'r*, 111 S. Ct. 2631, 2639 (1991). Not only is one-time abdication impermissible, but so is accession to past practice where such practice was itself unconstitutional. Those who would read the Treaty Clause out of the Constitution by appealing to past congressional practice (no matter how questionable that practice) essentially suggest that a period of disregard for constitutional text and structure may suffice in large part to erase the disregarded constitutional language or structure from the Constitution. If this becomes the accepted wisdom, then the Constitution will have failed in its central mission—to establish a framework for government that would outlast those who hold office at any given time. The protections inherent in provisions such as the Treaty Clause cannot be deemed alienable at the will of any era's officeholders, for such provisions are designed to protect the Republic as a whole, not merely the interests of those who serve at any one moment. It follows that past acts of abdication can neither bind current leaders nor authorize them to continue in such abdication.

The Constitution's structural safeguards were specially designed to provide states, citizens, and each branch of the federal government with ongoing protection from aggrandizement of power or neglect of constitutional responsibilities by those who temporarily hold public office—even when such aggrandizement or abdication seems wise as a matter of policy. The need for such constitutional protections lies in the tendency of seemingly benign departures from constitutional requirements to provide the momentum for permanent departures that will eventually result in the very harms that the constitutional structure was designed to prevent.

This is the situation that the Uruguay Round presents. The fact that the exigencies of war convinced the Senate fifty years ago to accede to demands for bicameral majoritarian approval of an arguably treaty-like agreement (Bretton Woods), and the further fact that political convenience may have extended such practice in the decades that followed, cannot justify continued departure from structural constitutional requirements when the very purposes served by such requirements (such as protecting state sovereignty) are seriously implicated by a proposed international agreement. To transform political leaders' casual approach to the Constitution into constitutional law goes against the fundamental rule-of-law basis of a constitutional form of government.

Some modes of argument that have been used in this debate seem particularly inappropriate to the question raised by the Uruguay Round. Those who reject my concern for the Treaty Clause have proffered arguments based on identifying individual elements of the Uruguay Round that have been contained in previous congressional-executive agreements. It is true that other international organizations have been formed outside the Treaty Clause. It is true that major trade agreements have been entered into outside the Treaty Clause. It is true even that international dispute settlement procedures have been established outside the Treaty Clause. It is simply not true, however, that any agreement of comparable scope and import—with the possible exceptions of our 1988 free-trade agreement with Canada (CFTA) and of the 1993 North American Free Trade Agreement (NAFTA)—has been entered into outside the Treaty Clause. If the Treaty Clause may be disregarded for the CFTA, for NAFTA, and for the Uruguay Round of GATT, it may come to be disregarded altogether and for all time.

It is one thing to employ an incremental, common-law style of argument for the development and application of contract and tort law principles, or for the elaboration and evolution of the individual rights encompassed within open-textured constitutional terms like "liberty" or "equal protection of the laws." But to use such reasoning to argue away an entire clause of the Constitution—particularly one that helps define the basic framework and architecture of our government—is a wholly different matter. We witness in such arguments a steady slide down the proverbial slippery slope. What such reasoning based on supposed congressional "precedent" illustrates most clearly is that conscious adoption of the Uruguay Round outside the strictures of the Treaty Clause could spell doom for the continued viability of the Treaty Clause itself unless the Senate were to make clear that it is reserving the constitutional issue for sober deliberation and that approving the WTO by Act of

Congress rather than as a Treaty should not be used as a precedent for still further erosions of the Treaty Clause.

In any event, much more rides on the Senate's handling of the Uruguay Round than simply the fate of the WTO, important as that organization promises to be. The Senate should not fail to recognize that its decision here to abdicate its Treaty Clause responsibilities would make it more difficult, in practice, for the Senate ever to assert its constitutionally specified role again. I cannot imagine the Senate doing the same for any of its other responsibilities; I can understand its acquiescence here only if I make the assumption that the constitutional arguments simply were not made early enough in the process for them to be given full and timely consideration on this occasion.

One argument in particular should be brought to the surface so that it can be confronted head-on. It might be suggested that, because any proposed constitutional amendment to alter the Treaty Clause explicitly would require a two-thirds vote of the Senate as well as of the House, it is hopeless to expect the supermajority requirement of the Treaty Clause ever to be removed from the Constitution, however unwise that supermajority requirement might prove to be, by the normal course of constitutional amendment through Article Namely, proposal of an amendment by two-thirds of both Houses, followed by ratification of three-fourths of the states. It might be suggested, therefore, that the only realistic choices are to call a new constitutional convention, which no one would seriously propose for this purpose, or to agree among ourselves that we will henceforth violate the Treaty Clause without feeling guilty about it.

I am unprepared to assume that, if a provision of the Constitution that grants extraordinary power to one of the bodies it creates proves deeply dangerous to the Nation, that body will permanently place its own position of privilege above the good of the country. However fashionable cynicism may be today—especially in discussing the Senate and the House—I am skeptical of the line of analysis that moves from mistrust of every politician's motives to a willingness to circumvent the Constitution's explicit arrangements for changing its own structures. Consider the example of the most recent amendment, the Twenty-Seventh, which provides that "[n]o law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." U.S. Const., 27th Amend. Although there has been an interesting debate about whether the amendment took so long to ratify that it somehow lapsed before it could become law (a view I do not hold),² it is clear that the amendment represents a dramatic instance in which both Houses voted by the requisite two-thirds majority to propose a constitutional change that would diminish congressional prerogatives. Nor was this willingness to put the national interest above the institutional self-interest of the House and Senate limited to the First Congress: following the Twenty-Seventh Amendment's ratification by a thirty-eighth state in 1992, both Houses voted overwhelmingly to treat the Twenty-Seventh Amendment as binding law.

None of this is to say that the Treaty Clause, rightly understood, is in fact a source of danger and therefore is in need of amendment; those who claim that it ought to be scrapped bear a strong burden of proof. My only point is that, if it should be amended, I am unwilling to concede the futility of trying to do it the old-fashioned way—through law.

II. THE URUGUAY ROUND'S STATUS AS A TREATY

When I first entered this national debate, it was to add a perspective that I felt was missing: the Uruguay Round's impositions on state sovereignty are so serious as to require the protection of states as equal sovereigns that is embodied in the Treaty Clause's provision for supermajority Senate approval. Lest my arguments regarding the WTO's effects on state sovereignty be misunderstood, let me be as clear as I can: In arguing that the Uruguay Round imposes significantly upon the sovereignty of states, I do not mean to suggest that such impositions are necessarily unwise, or that they are constitutionally impermissible. My point is rather that, in combination with other characteristics of the Uruguay Round, such impositions on state sovereignty so deeply implicate the normal lawmaking process of our political system that they are impermissible if the safeguards of the Treaty Clause are not followed.

The Uruguay Round's establishment of the World Trade Organization and its dispute resolution mechanisms represents a significant departure from prior versions

²My reasons for believing that the Twenty-Seventh Amendment, proposed by Congress in 1789, became part of the Constitution on May 7, 1992 are briefly set forth in "The 27th Amendment Joins the Constitution," *The Wall Street Journal*, May 13, 1992, at A15.

of GATT. Under the Uruguay Round, the United States will commit itself to "ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided" in the Uruguay Round agreements. Agreement Establishing the World Trade Organization (WTO Agreement), Art. XVI, ¶ 4. This commitment applies not only to those laws directly related to trade, but to any measure with even an indirect impact on trade that would be inconsistent with the provisions of the Uruguay Round. Under the Uruguay Round, any nation's complaint against a United States law or regulation could require the United States to submit to the authority of the WTO's Dispute Settlement Body or Appellate Body. Were a panel of the DSB (or the Appellate Body on appeal) to find a United States law "GATT-illegal," the United States would be bound by that decision unless it could persuade the entire GATT membership by consensus to overturn the adverse decision. The United States would then be faced with the choice of either changing the challenged law to bring it into conformity with the panel or Appellate Body decision, or accepting the imposition of trade sanctions. With the commitment of the United States to conform its every law and administrative regulation to GATT, with more than 120 member nations entitled to challenge American laws, and with the United States deprived of any veto power over the decisions of the dispute settlement bodies, our participation in the WTO makes very real the prospect of serious economic sanctions imposed in accord with an international regime that will be binding on the United States—sanctions, therefore, against which we will not be in a position to retaliate lawfully.

This prospect seems an inevitability when one considers that the Uruguay Round establishes that its provisions and dispute resolution mechanisms will apply not only to federal laws and regulations, but to all state and local measures as well. See WTO Agreement, Annex 2, Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding), Art. 22, ¶ 9. Like the federal government, states must also bring their laws into conformity with the Uruguay Round agreements. They too must submit to the authority of the WTO dispute resolution system.

The position of the states under the Uruguay Round, however, is decidedly more precarious than that of the federal government. Whereas Congress may choose between a GATT-illegal federal law and WTO-imposed sanctions, a state whose law has been found in violation of GATT provisions will know that if it does not change its law, one of the following will occur: Congress may preempt the offending state law; the Executive Branch may bring an action against the state and persuade a court to strike the law down under GATT; or the nation as a whole will be subject to retaliatory sanctions. If the state does not wish to change its law, the consequences are left to federal officials and to other nations.

This imposes upon states considerable new burdens and vulnerabilities—vulnerabilities that are exacerbated by the secretive dispute resolution procedures of the WTO, in which states may not participate directly. In the dispute resolution process, states to a significant degree will be forced to place their fates under the Uruguay Round in the hands of the Executive Branch, which may have incentives counter to those of particular states in the context of particular disputes. Because even the beneficial aspects of the WTO dispute resolution process offer nations incentives to challenge state laws or impose sanctions against state-based industries, state efforts—perfectly legal under United States law—to experiment with non-uniform laws, rules, and regulations may be placed in jeopardy. Because approval of the Uruguay Round will powerfully curtail state sovereignty and shift power from the states to the federal government, this trade agreement calls for the precautions of the Treaty Clause to be followed.

A. State Sovereignty and the Mechanics of the World Trade Organization

1. Operation of the Dispute Settlement Process

Under the Uruguay Round's Dispute Settlement Understanding, if a nation believes that another country's national or subnational law is GATT-illegal, the complaining country must first try to resolve the controversy through consultations with the other country. See Dispute Settlement Understanding, Art. 4, ¶ 2-6. If the consultations fail, the country may request that the WTO form a dispute settlement panel to resolve the dispute. See *id.*, Art. 4, ¶ 7.

Dispute settlement panels would be comprised of three individuals from non-disputant countries who would be drawn from a pre-approved list of governmental and private persons experienced in trade matters. See *id.*, Art. 8, ¶ 1-5. Based on written submissions and oral argument, the panel would issue a decision as to whether the challenged law is consistent with the Uruguay Round agreements. See *id.*, Art. 11; Art. 12, ¶ 6; Art. 19, ¶ 1. The nations which are parties to the dispute would be guaranteed the right to make submissions and present oral arguments; subnational

governments, including American states, whose laws are challenged would be able to participate in the process only at the discretion of their respective national governments. See *id.*, Art. 12, ¶ 6.

The losing party would have the right to an internal appeal of the panel decision to a standing seven-member Appellate Body. See *id.*, Art. 17, ¶ 1. Three members would sit for each appeal; their review of the panel decision would be limited to questions of law. See *id.*, Art. 17, ¶ 1; Art. 17, ¶ 6.

Unlike other WTO decisions under the Uruguay Round, dispute panel decisions, or Appellate Body decisions in the instance of an appealed case, would be final, unless every WTO Member nation agrees to reject the panel or Appellate Body's recommendation. See *id.* Art 16, ¶ 4; Art. 17, ¶ 14. This "reverse consensus" requirement is a 180-degree turnaround from prior GATT practice; it means that individual nations, including the United States, no longer maintain a de facto veto over GATT dispute panel decisions. This turnaround, which proponents tout as a critical strengthening of the GATT dispute resolution process, is alone sufficient to distinguish the Uruguay Round's potential effects on state sovereignty from the effects of all previous GATT agreements.

Once a decision has been rendered against a losing party, that party would have 30 days to decide whether to implement the WTO's recommendations and rulings. See *id.* Art 21, ¶ 3. If the losing party declines to revise its laws to make them consistent with the panel's interpretation of WTO rules, then it would be required to enter into negotiations with the prevailing party in an attempt to determine mutually acceptable compensation. See *id.*, Art. 22, ¶ 2. If no agreement can be reached, the prevailing party would be entitled to impose trade sanctions against the offender, unless the WTO member nations were to agree unanimously to refuse a request for sanctions. See *id.*, Art. 22, ¶ 2, 6. Trade sanctions would be of an amount equivalent to the value of market access lost by the prevailing party due to the practices found to be GATT-illegal, but sanctions could be levied against any industrial sector and thus against any state (not just the offending one) or against the United States as a whole. See *id.*, Art. 22, ¶ 4.

This possibility of "cross-sectoral retaliation" is likely to pose enormous difficulties for states and to provide perverse incentives for foreign nations to seek sanctions strategically, for example against industries in the home state of the Speaker of the House of Representatives or the Senate Majority Leader or Minority Leader. This raises doubt as to whether the interests of GATT-offending states will fairly be taken into account when Congress considers how to respond to adverse WTO rulings.

If a federal (rather than state) law were to be declared GATT-illegal by the WTO, it is the United States Congress that would retain the final word as to the law's domestic status. Congress could either revise or repeal the law, or keep the law in place and accept trade sanctions, which might continue so long as the offending law remains in effect.

But it is the Executive Branch, not Congress, that would determine the fate of state laws found to be in violation of GATT. If a state chose not to alter a measure found by the WTO to be GATT-illegal, the United States Trade Representative could choose to bring an action against the state in a federal court, see S. 2467, 103d Cong., 2d Sess. § 102(b)(2) (1994) [hereinafter *Implementing Legislation*]¹—even if Congress had chosen to allow the state's measure to remain in effect and to accept trade sanctions on behalf of the entire nation rather than preempt the offending state law.

In response to state complaints about being shut out of the WTO dispute settlement process, the Clinton Administration has included provisions in the Uruguay Round implementing legislation that require the Trade Representative to consult with an affected state at various stages of that process. If another country challenges a state law, the Uruguay Round implementing legislation requires the Trade Representative to notify state officials and provide them with the opportunity to advise and assist the Trade Representative in preparing for written and oral argument. See *id.*, § 102(b)(1)(C)(i)-(ii). The Statement of Administrative Action—but not the implementing legislation—further provides that state representatives will be included as part of the official U.S. delegation when state measures are at issue, and that they may be permitted to make presentations to a dispute resolution panel or the Appellate Body "where appropriate." See *Uruguay Round Agreements Act*, Statement of Administrative Action at 17.

If a state law is found GATT-illegal, the Trade Representative must consult with the state in an effort to develop a mutually agreeable response to the report of the panel or Appellate Body. See *Implementing Legislation* § 102(b)(1)(C)(iii). If a mutually agreeable response cannot be reached, the Trade Representative has the authority to bring legal action against the state to compel it to comply with the WTO's

rulings. Here the implementing legislation offers a noteworthy protection to states by assuring that panel or Appellate Body decisions are not to be deemed binding or even to be given deference in suits brought by the Trade Representative to force changes to state law, and by requiring the Trade Representative to bear the burden of proving in a United States court that a state law violates a GATT agreement. The implementing legislation's preclusion of private rights of action to enforce WTO rules or rulings provides an additional protection from what would be a further far-reaching imposition on state sovereignty.

The Administration's concessions to concerned state officials and the willingness of those officials to sign statements to the effect that the agreement no longer intrudes fatally on state sovereignty should not obscure the degree to which the WTO dispute resolution process puts the states at the mercy of the Executive Branch and the Trade Representative, forcing the states to rely on the federal government as their defender. The implementing legislation's vague requirements of notification and consultation provide no guarantee of meaningful involvement by state representatives in the dispute resolution process. The Statement of Administrative Action's commitment to include state representatives in relevant U.S. delegations is a noble gesture to the states—but, given that the Trade Representative need only permit state officials to make presentations to the dispute settlement panel “where appropriate,” see Statement of Administrative Action at 17, this promise may lack force because the commitment rests on the discretion—and perhaps whim—of the Trade Representative. I have great respect for the current Trade Representative, Ambassador Michael Kantor, whom I have known for many years. But he will not hold that post forever. And even if future Administrations were to make good on this commitment, it would still leave control of the U.S. presentation in the hands of the federal government's Trade Representative; it is doubtful that state officials would ever be permitted to defend their interests before a panel in a manner contrary to the official position of the United States.

Furthermore, the implementing legislation bestows remarkable powers on the Trade Representative by empowering the Trade Representative to take legal action to force changes in state law without further congressional authorization.³ I elaborate on some of the troubling implications of this grant of power below.

2. *Procedural Shortcomings of the Dispute Resolution Process*

The norms by which the WTO dispute resolution panels and the Appellate Body operate seem to me quite antithetical to basic American ideals of openness, accountability, and disclosure. This democratic defect will mar WTO dispute settlement proceedings for challenged federal and state laws alike. But the harms will be more severe for the states, whose direct role in the dispute settlement process will be tenuous and subordinate to that of the federal government in even the best-case scenario.

The dispute settlement process under the Uruguay Round would be shrouded in secrecy. All proceedings of the dispute settlement panels would be closed to both the news media and the public. See Dispute Settlement Understanding, Appendix 3, Working Procedures 12. Unlike legal complaints, briefs, and affidavits in United States courts, documents presented to the panels would be kept confidential (although countries would be permitted to release their own briefs). See Dispute Settlement Understanding, Art. 18, ¶ 2. The extent of the process's secretiveness is emphasized by one of the few concessions to openness won by the U.S. negotiating team: the WTO would allow countries to request a non-confidential summary of the information contained in an opposing party's official submissions that could be disclosed to the public. See *id.*, Art. 18, ¶ 2. This requirement is not an adequate substitute for disclosure of the submissions themselves because the contents of the summaries need not fully disclose all of the evidence and arguments of the actual submissions. There would be no means for direct public input into the dispute settlement proceedings, through, for example, public comment or amicus briefs. See *id.*, Art. 13. The Appellate Body decision-making process would be similarly cloaked in secrecy.

Further accountability problems plague the process. Dispute settlement panelists would be drawn exclusively from non-disputant countries, with the result that American decision-makers would not participate in the resolution of disputes involving the United States. See *id.*, Art. 8, ¶ 3.

³ Senators Kent Conrad and Charles Grassley proposed an amendment that would have cured this particular defect in the implementing legislation. The Conrad amendment would have required congressional action to force a state to change a law found WTO-illegal before the federal government could take action to force a state to revise its law. This proposal was not included in the implementing legislation.

Beyond the delicate issue of the political accountability of foreign nationals ruling on the legality of U.S. laws lies a perhaps even greater concern for states: panels made up only of foreign citizens are not likely to be sympathetic to, or necessarily even to comprehend, the American federal system. Furthermore, panelists would not be subject to conflict-of-interest disclosure requirements, nor would there be general guarantees of panel impartiality or economic disinterest. Finally, panel opinions would be anonymous; there would be no way to know which panelists joined the majority and which dissented. See *id.*, Art. 14, ¶ 3.

The Uruguay Round implementing legislation acknowledges these fundamental flaws and expresses aspirations that they be addressed. For example, it directs the Trade Representative to seek the establishment of rules governing panelist and Appellate Body member conflicts of interest, see § 123(c), and to promote transparency in the dispute settlement process, see § 126. These aspirations should be applauded—but they may never be realized. United States negotiating power was at its zenith during the horse-trading surrounding the actual Uruguay Round negotiations; there is little reason to suspect that other nations will make concessions on behalf of openness and accountability when there is less opportunity to extract reciprocal concessions in other areas. Congress's very admission, in the implementing legislation, that the WTO dispute resolution process contains serious flaws in conflict with traditional American notions of fairness is further support for the argument that the changes to be effected by the Uruguay Round call for the solemn deliberation and high degree of consensus required by the Treaty Clause.

To be precise: My point is that the Executive Branch and Congress, if they are to accept these democratic defects as the price of a bargain with other nations, have a constitutional duty not to bypass the protections of the Treaty Clause.

B. The Vulnerability of State Laws Under the Uruguay Round

The procedural concerns I have described are of special importance to the states because of the substantive provisions of the Uruguay Round that expose state laws to challenge in the WTO. I make no claims about the merits of these substantive provisions, about whether they are justified in their own right or as part of the overall Uruguay Round package. My point is only that the WTO has the potential to intrude significantly upon state sovereignty and that the WTO and Uruguay Round agreements should for this reason among others be subjected to the two-thirds ratification requirement of the Treaty Clause.

The following four broad, open-ended Uruguay Round principles would sharply limit state sovereignty:

First, an extreme version of the concept of non-discrimination (the notion that nations or states may not discriminate against foreign producers) would limit states' abilities to favor certain classes of producers, irrespective of nationality. This principle, established in a 1992 GATT ruling known as the Beer II decision (Feb. 7, 1992), would have much greater force if applied under the WTO. The Beer II panel found GATT-illegal a Minnesota law that gave favorable tax treatment to microbreweries, irrespective of nationality. The panel held that, even though the terms of the Minnesota law were nondiscriminatory, the law had a discriminatory effect against Canadian breweries, many of which were too large to benefit from the favorable tax treatment. (Indeed, the Beer II panel sustained Canada's challenges to sixty state beer and wine regulations, out of more than two hundred measures challenged by Canada.)

Second, product standards, including those designed to protect health, safety and the environment, must be the "least trade restrictive" means to achieve a legitimate objective. Agreement on Technical Barriers to Trade, Art. 2.2, 3.1. Under this rule, the political feasibility of adopting less-trade-restrictive alternatives is irrelevant; if such alternatives exist, they provide the basis for finding a more-trade-restrictive alternative GATT-illegal. The least-trade-restrictive test goes far beyond any normal non-discrimination principle, and would operate to hamper state efforts to set health and safety standards.

Third, state food and technical standards must be "harmonized" with international standards, unless special justifications for more stringent standards are provided. See Agreement on the Application of Sanitary and Phytosanitary Measures, Art. 9; Agreement on Technical Barriers to Trade, Art. 2.4, 3.1. While states would be permitted to maintain standards weaker than the international norms, the Uruguay Round would interfere dramatically with the ability of states to adopt stricter food safety and technical regulations.

Fourth, and most dramatically, the very existence of diverse state measures may create WTO-related difficulties. Ignoring principled, constitutional justifications for the American federal system, the Beer II panel ruled that one state's higher regulatory standards could be found discriminatory and GATT-illegal because another

state maintained lower standards. U.S. reservations to the General Agreement on Trade in Services (GATS) will prevent similar rulings against the United States in the tax area in the future, but state laws regulating trade in goods remain vulnerable to Beer II reasoning. This vulnerability will undoubtedly deter and hinder states from engaging in their all-important roles as "laboratories" of experimentation and change. As Justice Brandeis long ago recognized, "[i]t is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311(1932) (Brandeis, J., dissenting). To end this opportunity, nothing less than a treaty should suffice.

In a slightly different vein, the European Union has complained about the wide range of state and municipal standard-setting authorities in the United States and has argued that "[e]ven if, in general, not intentionally discriminatory, the complexity of U.S. regulatory systems in this domain can represent a very important structural impediment to market access." *Services of the European Union, Report on United States Barriers to Trade and Investment: 1994*, at 55.

Based on these and other GATT principles, the European Union, Japan, and Canada have already made clear that they view a wide range of U.S. state laws as illegal trade barriers. Among the state laws and regulations identified as illegal barriers to trade in a recent report from the European Union are the following: California's Safe Drinking Water and Toxic Enforcement Act (Proposition 65); the unitary taxes of Alaska, Arizona, California, Colorado, Connecticut, the District of Columbia, Illinois, Indiana, Iowa, Kansas, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Rhode Island, and West Virginia; a proposed New Jersey ban on green glass beverage containers; and a number of states' requirements that electrical equipment receive a safety seal from Underwriters' Laboratories. See *id.* at 49, 56, 57, 58. Georgetown University Law Professor Robert Sturmborg, in a report prepared for the Center for Policy Alternatives, has identified ninety statutes in California alone that are likely to be subject to WTO challenge. See Robert Sturmborg, *GATT Impact on State Law: California (1994)* (working paper).

C. The WTO's New Dynamic in State/Federal and State/Foreign Relations

Dismissing the Uruguay Round's procedural constraints and substantive infringements on state sovereignty, the Office of Legal Counsel has argued that, because any Uruguay Round-driven limitation on state sovereignty falls within the range of what Congress could impose in the absence of an international agreement, the Uruguay Round would not diminish state power sufficiently to activate the Treaty Clause. This argument confuses a claim that a particular intrusion on state sovereignty would be unconstitutional regardless of the method by which Congress and the President enacted it—a claim I do not make as to the intrusions at issue here—with the claim that a set of intrusions on state sovereignty is sufficiently grave to trigger the requirements of the Treaty Clause. Moreover, this argument fails to come to grips with the actual shifts in power that the Uruguay Round will effect, and with the new political and economic incentives that those shifts will create for our federal government and for foreign governments. Under the Uruguay Round, a new dynamic would characterize relations between states and foreign nations and between states and the federal government.

First, states may become pawns in international conflicts and suffer at the hands of angered or strategically minded foreign governments. If a foreign nation wins a challenge to any United States law, state or federal, and the United States declines to revise or preempt the law, or otherwise deprive the law of effect, the foreign country would be free to impose countervailing sanctions against any U.S. industry. It would be strategically sound for the foreign country to challenge state-specific industries in order to generate a politically concentrated backlash against a refusal by the United States to revise the GATT-illegal law. This would be a particularly potent ploy in the case of a GATT-illegal state law because it would set states against one another—in an uncanny reenactment of the sad state of affairs under the Articles of Confederation, whose internecine trade wars were largely responsible for the historic decision in Philadelphia to propose a new Constitution in 1787. Such maneuvers might also be directed against industries in the home states of powerful members of Congress; for example, in an effort to encourage the Senate Majority Leader to advocate the revision of a federal law found to be GATT-illegal, a foreign nation might choose sanctions that would most severely hurt industry in that Senator's home state.

Similarly, a foreign nation locked in a trade dispute with the United States, or one whose laws were recently challenged by the United States, might take advantage of the breadth and open-ended nature of the Uruguay Round's substantive pro-

visions to bring a counter-challenge against a law of the United States. It was, in fact, a prior U.S. challenge to Canadian laws that prompted Canada's complaint in Beer II under the current GATT. Under the Uruguay Round, as well, a foreign nation would have strong incentives to challenge state laws, especially the laws of states that are home to powerful national legislators, in order to divide domestic support for the U.S. negotiating position.

Second, with the Trade Representative in charge of defending state laws from foreign challenge, states will be dependent on the degree of sympathy the federal executive branch has for the challenged state statute. Given our federal system's frequent and characteristic clashes between federal and state interests, and given that state laws are most vulnerable to challenge in those technical fields where state standards are more stringent than federal standards, it is far from unlikely that the Executive Branch may oppose the substance of the challenged state law. In such a situation, the states would be entitled to be skeptical about the zealotness of the Trade Representative's defense of their laws—but they would be powerless to affect it.

Third, the possibility posed by the implementing legislation that the Trade Representative will be defending a challenged state statute in Geneva, and then subsequently challenging it in United States courts as GATT-illegal, forces the Executive Branch into an institutional conflict of interest. The same Trade Representative officials who would argue on behalf of a challenged state law before the WTO would know that, if they lost, they might well have to respond in federal courts to the very arguments they had made before the WTO, in an effort to force the state to revise its law. Because the WTO decision itself would not have binding effect in U.S. courts, these trade officials would be forced to argue the merits of the issue—from a perspective diametrically opposed to the one they had advanced before the WTO. The potential of arguing both for and against a challenged state law would obviously put the Trade Representative in an extremely awkward situation. Politically, the Trade Representative would thus find it very difficult to go out on a limb in its defense of state law challenged in the WTO dispute resolution process. The victims of the Trade Representative's conflict of interest would be the states, which must depend on the Trade Representative to defend their laws aggressively before the WTO.

Fourth, in the horse-trading that will surround the negotiations before a foreign country brings a formal challenge to U.S. laws (mandated by the WTO's requirement of consultation prior to the bringing of a formal challenge) and the negotiations after the foreign country has prevailed in a formal WTO challenge and the United States declines to revise its GATT-illegal law (mandated by the WTO's requirement that parties seek an agreement as to "mutually acceptable compensation"), the Trade Representative will have an incentive to trade away state rather than federal laws. The Trade Representative cannot promise a foreign country that federal laws will be changed without congressional action; however, the Trade Representative may bring legal action to change a contested state law without prior congressional authorization. In other words, the Trade Representative would be able more easily to deliver on promises to change state statutes than he would be able to follow through on commitments to have federal laws revised. The result is that state laws would become particularly convenient bargaining chips in international disputes.

Fifth, the requirement that national governments ensure state law conformity with the terms of the Uruguay Round agreements would have a chilling effect on the progressive evolution of state laws. Although the possibility of sanctions would be triggered only by complaints lodged by a foreign country, the United States would maintain an ongoing obligation as a WTO member to ensure state law conformity, as well as an ongoing sensitivity to state or federal laws that might be GATT-illegal. The Trade Representative would be likely to exert pressure on state legislatures to rethink legislative proposals that venture near the zone of questionable GATT-legality out of concern that the legislation might provoke foreign challenges. (The pressure could be purely political, or it could involve threats of withheld federal funds or legal action.) The effect will be to inhibit legislative creativity and stifle state experimentation.

Membership in the World Trade Organization would not be "just another" foreign obligation of the United States. It would involve a substantial shift of control over each of the fifty states from Congress to the Executive Branch and to foreign nations. Under the Uruguay Round, foreign nations' actions would normally trigger executive efforts to force states to revise their laws. State laws would be subject to challenge in a closed and unaccountable dispute settlement process from which states would be excluded in important ways. Under the WTO, the states would be required to adjust their laws to adhere to the extremely broad and open-ended sub-

stantive provisions of the Uruguay Round agreements. Perhaps most importantly, states whose laws had been found GAIT-illegal by a WTO panel would be under enormous pressure to revise those laws in order to avoid trade retaliation against their sister states even if they had succeeded in persuading the Trade Representative not to bring a legal challenge in a United States court. It will be small consolation for a state that has been placed in this predicament to be told that it need not worry because, after all, the decision of the WTO panel will not, under the implementing legislation, take legal effect in the United States. See Implementing Legislation § 102(b). Imagine a regime in which a foreign tribunal could find an American citizen guilty, in absentia, of conduct inimical to world trade. How much solace would that citizen receive from an assurance that the tribunal could not actually compel the citizen to alter the offending conduct but could "only" retaliate with heavy sanctions against the citizen's brothers and sisters?

Perhaps recognizing the force of such arguments, the Trade Representative has maintained on a number of occasions that it is not the Uruguay Round that puts this dynamic in place. Writing to me on behalf of the President on October 14, 1994, for example, Ambassador Michael Kantor made the point that, "[i]n the absence of the GATT or WTO, foreign countries would be perfectly free to impose tariffs or other restrictions on U.S. exports—even if the express purpose were to prompt a change in state or federal law." Letter from United States Trade Representative Michael Kantor to Laurence H. Tribe, Oct. 14, 1994, at 2. With all due respect, this is not an answer. Absent the Uruguay Round and the explicit authorization of retaliatory tariffs, any such efforts by one of our trading partners could ordinarily be deterred by the threat that, if they were to take such a step, we would retaliate under section 301 of the Trade Act of 1974 or otherwise. If and when the Uruguay Round becomes law in the United States, however, it would violate international law under the GATT for us to throw our weight around in that way.

In essence, the Trade Representative is trying to compare the dangers to state sovereignty under the Uruguay Round with the dangers that American states would confront if they were to compete on their own in the world market. But the states are in fact part of the most powerful common market on earth—the United States of America. Nor is it relevant to compare the Uruguay Round with the law of the jungle. The only relevant comparison is between where the states stand today and where they would stand if the implementing legislation were approved.

Of course, the dangers I have outlined here may not come to pass. And they may be justified in any case by the benefits conferred by membership in the Uruguay Round. But that is not my point. Where state sovereignty is as significantly at stake as it is here, we should exercise special caution. That is what the supermajority requirement of the Treaty Clause is all about.

Joining the World Trade Organization entails more than making another trade agreement. Although there are many similarities between the substantive provisions of the Uruguay Round and NAFTA, for example, there are major differences as well. It is beyond the scope of my testimony today to compare the provisions of NAFTA and the Uruguay Round. But even were it to be the case that the provisions of NAFTA should properly have qualified it as a treaty, the appropriate conclusion to draw from such an observation would be that a recent constitutional error was made, not that it should be compounded by a second.

D. Further Treaty Clause Concerns

I believe that recent changes in the implementing legislation for this agreement represent good faith efforts by the Clinton Administration and in Congress to respond to the concerns raised by representatives of many states during the past year, concerns about state sovereignty that initially sparked my participation in this public debate. All of us should hope that these are not empty promises; to that end, if the Senate and House decide, despite constitutional misgivings, to approve the Uruguay Round without compliance with the Treaty Clause, I trust that both bodies will leave behind a legislative history making clear that the consultative and other commitments included to assuage the concerns about incursions upon state sovereignty were vital to the implementing legislation's passage.

Despite these changes in the implementing legislation—changes that representatives of many states have apparently embraced, or at least accepted as a compromise—I do not retreat from my claim that the Uruguay Round should properly be considered a treaty. State sovereignty concerns find special protection in the Treaty Clause because the Senate is the only body that represents the states as states, and the only body in which every state, from the smallest to the largest, is guaranteed equal representation. It is the only national body in which all members are politically accountable to all the voters in their respective states. In the House of Representatives, by contrast, a representative might feel political pressure to sup-

port a measure that would benefit his or her district at the expense of his or her state as a whole. In the Senate, however, the states are represented as states—and on a basis of equality. The history of the framing of the Treaty Clause leaves no doubt that the Senate's special role as guarantor of state sovereignty and of interstate equality was central to the special role the Senate was given in matters of treaty ratification. The Clinton Administration is to be applauded for considering in the implementing legislation measures to protect the interests of states, but recognition of the need for such legislation lends strong support to my initial claim that the Uruguay Round poses special state sovereignty concerns above and beyond those posed by prior international agreements.

I remain concerned that the promises of the implementing legislation have the potential to be more illusory than real. But even were state sovereignty concerns to be adequately addressed by the implementing legislation, I would continue to regard the Uruguay Round as a "treaty" within the meaning of the Constitution. State sovereignty is only one of the values protected by the Treaty Clause, albeit a major one. As my colleague Professor Anne-Marie Slaughter explains in her letter of October 18, 1994 to Chairman Hollings, the Treaty Clause's provision for supermajority approval is an independent guarantee that particularly important international agreements—those that very significantly constrain U.S. sovereignty by seriously implicating normal state and federal lawmaking processes—will be subject to especially serious deliberation and will be based upon especially strong national consensus.

The characteristics of the Uruguay Round clearly qualify this agreement as the sort that warrants such a high degree of consensus. Although there remains considerable debate as to the exact impact of the WTO on state sovereignty, few persons seriously question that the Uruguay Round and the WTO may have remarkably wide-reaching effects on our national economy and on the operations of our Nation's systems for making domestic law. Indeed, when one steps back and takes a broad look at the Uruguay Round, its unusual scope and import stand out clearly.

Although I do not offer a comprehensive set of criteria for defining the boundary between treaties and other international agreements, it is clear to me that, whatever the precise contours of the treaty category, an agreement warrants the high level of consensus mandated by the Treaty Clause and may not escape classification as a treaty if it (1) creates a governing entity with a "legal personality" and legal powers capable of affecting the lives of all United States citizens by affecting state and federal lawmaking efforts; (2) provides for ongoing cooperation and reciprocal commitments among more than 120 nations; (3) accedes to the more than theoretical possibility of the United States being subjected to substantial international sanctions against which the United States cannot retaliate without placing itself in violation of the agreement; and (4) accordingly contemplates wide-reaching effects on the legal, economic, and political life of every state.

The combination of these factors in a single agreement would seem to compel the conclusion that the agreement warrants the high level of deliberation and consensus that the formal requirements of the Treaty Clause guarantee. This agreement will help shape the future of American trade with nearly every nation on earth and will likely have a significant impact on the efforts of states to regulate their own industries, environment, and public safety. The very idea that the creation of a World Trade Organization—an international governance body with real powers—would not require approval as a treaty is remarkable, to say the least.

Thus, while I have previously stressed the Uruguay Round's incursions into state sovereignty in arguing that this agreement must be deemed a treaty, I have never suggested that this is the only characteristic of the agreement that warrants following the procedures of the Treaty Clause in addition to obtaining bicameral congressional passage of all necessary implementing legislation. To the contrary, even if Senators disagree as to the precise degree to which state sovereignty will be affected by the WTO, and even if they find themselves persuaded by the statement of the National Conference of State Legislatures that "the new GATT agreement, with [its] added protections for states, will not intrude on state sovereignty," it should be clear from the other characteristics noted above and from the dramatic importance of this agreement to our Nation's lawmaking structure that the Treaty Clause's precautions should be applied here if they are to be applied anywhere. Thus, the Senate's action with respect to the Uruguay Round carries special significance. By declining to consider the Uruguay Round as a treaty, the Senate will be doing far more than simply making a statement about this particular agreement. The Senate will be giving powerful new ammunition to those who want to argue that the Treaty Clause has essentially been amended out of the Constitution, that the President need not worry about its requirements in the future, and—most ominous of all—that any other element of the Constitution's architecture that comes to be seen by enough elites as

an annoyance in the modern world can be obliterated by sufficiently dramatic defiance without troubling to amend the Constitution.

III. EXAMINING THE SENATE'S TREATY CLAUSE ROLE

I recognize that as a political matter it may appear to be too late in the game—now that both Houses of Congress have scheduled lame-duck sessions to vote up or down on the Uruguay Round—for the Senate suddenly to reclaim its constitutional role and insist that the Uruguay Round be approved by Senate supermajority. But I fear that this constitutional lapse will become fodder for future arguments that the procedural safeguards of the Treaty Clause need never be followed. Just as we hear today the claim that, if Bretton Woods and NAFTA did not need to be considered as treaties, then neither does the Uruguay Round, I feel certain that the argument will henceforth always be made that, if the World Trade Organization could be established without a treaty, then the treaty form is never required.

At some point, the Senate must stop to consider the significance of what has happened here. Regardless of Senators' views on the merits of the WTO, the very real prospect that the Senate's abdication of its Treaty Clause responsibilities with respect to the Uruguay Round will be seen as further precedent for the wholesale gutting of the Treaty Clause should give the Senate pause. I cannot fathom that the Senate would so easily surrender its constitutional responsibilities—and prerogatives—in any other area. The Senate, I am quite sure, will always guard its unique role in confirmation of Supreme Court Justices and other principal officers. The Senate, I am quite sure, will not dismiss as inconvenient and anachronistic the two-thirds Senate vote requirement for convictions upon impeachment.

I urge the Senate to use similar vigilance in preserving its proper role in the approval of treaties. This issue should not be confined to the pages of law reviews and the arguments of law professors, but rather deserves the attention of those who have taken an oath to support our Constitution. Regardless of the path that the Senate chooses to follow for the Uruguay Round, I suggest that the Senate establish procedures and criteria for deciding on a principled, rather than political or partisan, basis whether future international agreements should be subject to the special safeguards of the Treaty Clause. An ad hoc approach is inadequate, for it demonstrates insufficient concern for the Constitution's structural framework. Rather I would respectfully urge that the Senate seriously study this question and develop guidelines for deciding when an international agreement warrants consideration as a treaty. The Committee on Foreign Relations, the Committee on the Judiciary, and this Committee each have distinctive perspectives that should be brought to bear on this question. The nation as a whole would benefit greatly from the resulting deliberation about constitutional structures and values. My colleague, Professor Richard Parker, has emphasized the importance of such open deliberation in expressing his agreement with my constitutional views about the Uruguay Round. See letter of Professor Richard D. Parker to Senator Robert Byrd, Aug. 9, 1994. In addition, serious Senate deliberation about guidelines for determining the constitutional status of particular agreements will make courts more likely to defer to the Senate's judgment as to whether a particular agreement could properly be approved as a congressional-executive agreement. It would thus be very much in the Senate's long-term interest to explore this issue carefully and to produce well-reasoned guidelines.

By urging the Senate to reclaim its constitutional duties, I mean no disrespect for the House of Representatives, often regarded as the most directly representative House. It, too, has unique constitutional roles, such as the origination of all revenue bills and the initiation of impeachments. With respect to treaties, the House of Representatives has no reason to fear that the Senate ratification process will shut it out from the lawmaking process, for the House will retain its all-important role in the approval of implementing legislation for treaties. The House can thereby play a crucial role in determining the practical impact of treaties on domestic law.

When the Senate and House reconvene this November for the "lame duck" session's scheduled vote on the Uruguay Round, almost fifty years to the day will have passed since the House Judiciary Committee in November 1944, also in a "lame duck" session, held hearings on the Treaty Clause. That December, the Judiciary Committee reported a proposed constitutional amendment to that clause that would have replaced ratification by two-thirds of the Senate with ratification by a majority of both Houses. As we all know, the amendment did not pass. It would be too much to expect, I suppose, for the "lame duck" session scheduled for this November to revisit the Treaty Clause and to confront forthrightly the question: should it be scrapped, as the House Judiciary Committee proposed fifty years ago, or should it be reinforced by the development of guidelines for those international agreements that so affect our national lawmaking structures, and hence our basic sovereignty,

as to trigger the supermajority safeguards of the Treaty Clause as it has existed from the founding of the Republic?

In considering such guidelines, whether in the forthcoming "lame duck" session or, more realistically, when the next Congress convenes, no one should take for granted the easy assumption that, in an increasingly dangerous and interdependent world, where isolationist tendencies may imperil a nation's very survival, the best way to move toward internationalism and away from isolationism would be to do what the House Judiciary Committee tried to do in 1944. On the contrary, some of the most vital international agreements, from the perspective of global peace and democracy, may well be agreements that two-thirds of an increasingly enlightened Senate might ratify in self-executing form, in circumstances where a majority of the sometimes more parochial and inward-looking House of Representatives might have voted no. Recent experience with NAFTA—which the House approved by not much beyond a majority, the Senate by a much wider margin—hardly suggests, for example, that winning lopsided majorities in the Senate on matters of international commitment will necessarily be more difficult than winning bare majorities in the House.

As the Senate considers guidelines and criteria for invocation of its Treaty Clause prerogatives, I would urge it to address ways of making its advisory role effective rather than counterproductive. In particular, many critics of the way the Treaty Clause operates have noted that, as the Senate has grown in size, and as Presidents have increasingly relied on congressional-executive agreements, congressionally enacted requirements for timely involvement by appropriate committees of both the House and the Senate in the formulation of international commitments—for example, in the Trade Act of 1974—have facilitated meaningful input from Capitol Hill and obviated the need for the Senate to assert itself in destructive ways, such as by the addition of reservations to treaty ratifications in circumstances where those reservations provide fig leaves for Senators who are in fact completely opposed to the treaties in question but are reluctant to say so. It would be a serious mistake to suppose that the only solution to this kind of problem is the unconstitutional one of submitting to bicameral legislative approval those agreements that the Constitution denominates as treaties. On the contrary, through its power under the Necessary and Proper Clause, Congress could enact legislation to help effectuate the purposes of the Advice and Consent proviso of the Treaty Clause, giving structure and clarity to the process by which advice is taken and consent obtained.

CONCLUSION

The enduring importance of constitutional structure surpasses the significance of the political issues of the moment. The position that I have taken regarding the Uruguay Round and the Treaty Clause has, much to my disappointment, been the source of bewilderment for some. When I recently described my views to a prominent professor of international and constitutional law, he seemed to agree with my constitutional analysis but was puzzled that I would care, especially given my strong support of the Clinton Administration and much of its legislative agenda, including its vigorous struggle to lower trade barriers. What, this professor wondered, could possibly motivate me to urge upon both the President and the Senate a procedural hurdle for a measure I support? I was both surprised and saddened by that conversation and by the notion that I should be asked by a fellow professor of law to justify my concern for the Constitution.

It is my hope that Senators who have taken an oath to support the Constitution will not find my concerns somehow odd, but will agree with me that the structural provisions of the Constitution are to be regarded as far more than mere procedural hurdles to be disregarded when the political or economic gains, or the habits of the time, make those hurdles seem too quaint or too costly to take seriously. The constitutional structure embodies protections dearly fought for and won at great price. When the Senate properly fulfills its Treaty Clause responsibilities, it is doing no less than upholding our constitutional form of government.

The CHAIRMAN. Thank you very much, Professor Tribe. Professor Ackerman.

STATEMENT OF BRUCE ACKERMAN, PROFESSOR, YALE UNIVERSITY LAW SCHOOL

Professor ACKERMAN. Thank you very much, Chairman Hollings and members of the committee. I am very much honored to come here today and to be invited to explain to you why I think that the

World Trade Organization is on absolutely solid constitutional foundations.

My comments will be a bit briefer because I want you to focus on what I take to be the central question, and that is whether Professor Tribe is reading the Constitution in a vacuum—in a textual vacuum, first of all.

Before we get to article II and the powers of the Senate prescribed therein the eye begins with Article I of the Constitution which provides fundamental grants to the Congress, including an express authorization to regulate commerce with foreign nations.

If both Houses find that approval of the World Trade Organization is a necessary and proper way of exercising these article I powers, the congressional decision merits complete respect under the most fundamental principles announced long ago by Chief Justice Marshall in *McCulloch v. Maryland*.

Let us just think of a few of these words of the great Chief Justice. "Let the end be legitimate," that is the regulation of foreign commerce, "and all means which are appropriate which are not prohibited are constitutional."

As Chief Justice Marshall's great statement indicates, an effort to limit article I might be justified if the Constitution had explicitly said that "only" the Senate could give its advice and consent to fundamental international agreements. But the text of article II does not contain the word only. It simply creates an alternative route which the President and the Senate may use if in their judgment it is appropriate.

This textual point is nothing new. It was recognized during the earliest days of the Republic. James Madison, who after all is more important in our constitutional writings than any other single human being, dismissed the monopolistic reading of the treaty clause that Professor Tribe presents today with the following words, and I quote, "nothing more was necessary on this point than to observe that the Constitution had as expressly and exclusively vested in Congress the power of making laws, as it has invested the President and Senate the power of making treaties." This is from the Annals of the Fourth Congress in a great debate on the Jay Treaty.

Madison's view has been adopted by the American Law Institute after extensive deliberation in its recent Restatement of Foreign Relations Law. As Professor Tribe kindly suggested, I myself have engaged in a comprehensive study of all the precedents of the last 200 years in an article in the Harvard Law Review, and a book of mine to be published later on by the Harvard University Press. I fully endorse James Madison's view.

The crucial point is to recognize both article I, and its commerce power, and article II for what they are—great and independent grants of power, each of which suffices to justify the creation of international obligations.

This is by no means the only case in which the Constitution creates multiple legislative procedures for accomplishing the same end. To the contrary, the text of our Constitution provides no fewer than four ways of passing a constitutional amendment. And there are, of course, two ways of passing a statute, one with and one without the cooperation of the President.

Similarly, articles I and II set up alternative systems through which the Nation can commit itself internationally, one with and one without the cooperation of the House of Representatives.

Note, moreover, that the text prescribes the same supermajoritarian remedy whenever one branch is excluded from the lawmaking process. Thus, in creating statute law, two-thirds of both Houses of Congress are necessary to override the Presidential veto. Similarly, in creating international obligations by treaty, when the House is excluded two-thirds of the Senate is required.

Indeed, if Professor Tribe's exclusive concentration on article II were justified, I believe that this would be the only context in the Constitution in which an important area of law was monopolized by one track. Both constitutional amendments and statutes envision multiple tracks to validity, sometimes with two and sometimes with all three branches of the House, Senate, and Presidency cooperating.

This is a very subtle textual system which puts the Senate at the very center of the entire process of international negotiation. I believe that the Senate has made a sound constitutional decision in considering the World Trade Organization as a congressional-executive agreement and not as a treaty; one that is squarely in line with both fundamental constitutional principle and the overwhelming weight of precedent.

There is absolutely no reason to allow last minute constitutional objections to cause any second thoughts about the constitutional foundation of the World Trade Organization, the result of many years of fruitful collaboration between Congress and the Executive that should serve not as an embarrassment but as constitutional exemplar for fruitful cooperation and genuine advice of Congress long before the final signature was given.

Let me turn first to the precedents. This is not the first time that an agreement like the World Trade Organization has seriously been considered by the United States. Both President Truman and President Eisenhower made similar efforts to displace GATT with a more substantial organization to govern international trade.

On both occasions, Presidents Truman and Eisenhower announced their intention to submit these agreements as congressional-Executive agreements and not as treaties.

These initiatives were not withdrawn in response to constitutional objections. I can assure you, I have studied a little history. They were withdrawn simply because neither President Eisenhower nor President Truman had the votes in the two Houses.

So far as the Constitution is concerned, the Clinton administration is not breaking new ground in submitting the WTO for consideration as a congressional-Executive agreement. It is simply following the same course marked out by Presidents Truman and Eisenhower.

More generally, the modern Senate has cooperated with the House in invoking its article I powers on a wide front over the last 50 years. congressional-Executive agreements have served us well on a broad range of issues from Bretton Woods to SALT I.

This remarkable array of precedent supporting the use of the congressional-Executive agreement generates a very serious problem for critics who wish to use their last-minute constitutional

challenge to derail the World Trade Organization. Quite simply, it is hard for them to attack the World Trade Organization without undermining many other key international agreements.

Thus, in his latest and most elaborate memorandum on the subject to which the chairman referred, Professor Tribe recognizes that his constitutional critique implies that NAFTA, as well as the World Trade Organization, may be unconstitutional, but consoles himself with the suggestion that NAFTA will be his only other victim—that was a paraphrase of page 8 of the memorandum to which Chairman Hollings referred.

Unfortunately, Professor Tribe has not made an adequate canvass of existing congressional-Executive agreements. He does not even mention, for example, America's earlier free trade agreements with both Canada and Israel, but it is hard to see how he would distinguish them from NAFTA.

Worse yet, the same memorandum describes Bretton Woods on page 11 as, and I quote, "arguably treaty-like," and therefore places American membership in the World Bank and the International Monetary Fund under a constitutional cloud.

It is a serious thing to question American commitments to Mexico, Canada, Israel, the World Bank, and the International Monetary Fund in the course of a single memorandum about the World Trade Organization, especially given Professor Tribe's disarming confession that, and once again I quote, this time from page 17, "drawing a clear boundary around the treaty category is difficult."

If the Senate gives credence to Professor Tribe's last minute efforts to stop the World Trade Organization on constitutional grounds, it would immediately destabilize a host of America's solemn commitments as our allies wondered which of their congressional-Executive agreements, and there are many of them, fell on the wrong side of Professor Tribe's admittedly blurry constitutional boundary.

Worse yet, Professor Tribe has provided us with no compelling constitutional principle for creating such a poorly defined exception to Congress' broad powers under article I. Professor Tribe argues that only the Senate represents the States as States, and therefore it should be given a constitutional monopoly over international agreements which limit a State's regulatory authority.

To assess this argument, one should begin by noting just how extreme it is. Professor Tribe is trying to protect the Senate from itself. He wants to deny the Senate the right to think of itself as part of Congress, but that is what the Senate is under article I, and find that article I, which the Senate is equally empowered to engage in, provides a more suitable procedure than the treaty clause for testing national commitments on one or another matter involving the regulation of foreign commerce.

Given this extreme objective, his argument fails to convince for at least four reasons. First, it is unacceptably formalistic. The House of Representatives also represents the States as States, remaining firmly rooted in local political systems, as all of us know. Thus, a conscientious Senator could well conclude that he or she might protect Federalist values better by participating as part of Congress under article I than to insist upon his prerogatives under article II. Indeed perhaps one the greatest articles written by a law

professor, Prof. Herbert Wechsler, is all about how both Houses of Congress profoundly represent Federalist values in different ways.

Second, the Senate remains a full partner in the process of reviewing congressional-Executive agreements. Insofar as it represents Federalist values in a distinctive way, and it does, its contribution to the deliberative system remains intact.

Third, the Senate makes its treaty clause decisions under a rule that gives a minority of Senators veto power. Minority vetoes are always problematic in democratic theory, and they are especially troublesome when one-third of the Senate can represent a much smaller percentage of the population.

That does not mean that it is not all right to act under the treaty clause. There are fundamental reasons for thinking that it is all right. But on the other hand it is also all right, equally all right, for a conscientious Senator to select the article I procedure which represents Federalist values in a different and all together legitimate way.

Finally, there is a special factor that merits special consideration in the case of the World Trade Organization. This is the constitutional requirement that all revenue bills originate in the House of Representatives. Given the World Trade Organization's special impact upon the revenue, it is especially appropriate to involve the House in the process of approving an organization that will seriously affect the discharge of revenue raising responsibilities specifically imposed on it by the Constitution.

If one adds all these factors up, and there are many others, the Senate seems on unimpeachable constitutional ground in deciding to exercise its article I powers in dealing with the World Trade Organization. This idea that we can read article II in a vacuum, without situating it in the larger text, is the worst kind of narrow constitutionalism. I could just as easily start my reading with article I and ignore article II. That too would be completely illegitimate.

It is, of course, an important fact in this particular case that article I does require all revenue bills to originate in the House of Representatives and must therefore, in a total reading, be weighed by a conscientious Senator in deciding whether this kind of agreement should be processed under the powers of article I or the powers of article II.

There is absolutely no reason to stop the process of considering the World Trade Organization, the product of many years of hard work, at the last minute merely because Professor Tribe wishes to take the exercise of constitutional judgment away from the Senate and dogmatically insist that there is some test, if he could only elaborate it, which the WTO fails and therefore must, without any exercise of judgment in the Senate, be processed through article II, and only article II.

I entirely agree with Professor Tribe that we have to think of the structural provisions of this Constitution, but there is no more fundamental structure in our Constitution than that described in article I.

That is why *Chadha* is absolutely correct. *Chadha* wanted to require us to respect the power of article I. And this is entirely an appropriate thing for us to do today in balancing the claims of article I and the claims of article II, and coming to a decision, as the

Senate has done, that article I, in this case, is the most appropriate way of proceeding.

I am happy to hear that one of his colleagues, and Professor Tribe now endorses the view, insists that one should consider the quality of deliberation in assessing the treaty clause. But, our basic article I system is committed to the view that two heads are better than one, and that the quality of serious deliberation generally is pursued better through the principle of bicameral deliberation.

While Professor Tribe ignores this point, and seems to believe that only through the treaty clause can serious deliberation of this kind proceed, we have seen that this basic commitment to bicameral deliberation has impressed great constitutionalists from the days of James Madison, who explicitly warned us against reading article II in a vacuum, to the most recent Restatement of Foreign Relations Laws promulgated after a great deal of deliberation and without any partisan commitment having to do with the WTO, or NAFTA for that matter, by the American Law Institute.

Even more important than these opinions of James Madison or the American Law Institute, let alone my own, the powers of article I have served as the constitutional foundation for the regular practice of Presidents and Congresses, both Democratic and Republican. If we look at the 80th Republican Congress we will also find Taft and Vandenberg supporting congressional-Executive agreements.

No reason has been given to abandon this fundamental commitment in the text and in the bipartisan congressional practice, time after time, to bicameral deliberation in appropriate cases.

In this case I very much hope that the Senate does not succumb to the view that there is some kind of clever law professor test that will excuse it from the exercise of fundamental constitutional judgment about the claims of article I and the claims of article II.

Thank you very much.

The CHAIRMAN. Thank you, Professor Ackerman. I think it would be appropriate if each of you had a brief reply, if you desire.

Professor TRIBE. Thank you, Mr. Chairman. I have been chomping at the bit.

I do not urge a clever law professor substitute for the wisdom of this body. I urge this body to exercise its constitutional judgment. That, in case Professor Ackerman did not hear it, was my concluding remark.

I hope this body will take seriously the development of criteria for which kinds of solemn international commitments require the special protections of the treaty clause. It is an absolute and total red herring to argue about whether two heads are better than one. That is not the point.

A treaty of this kind should never be self-executing. Of course, it would require self-implementing legislation by the House and the Senate. Talk about reading the Constitution in a vacuum. I have read this whole thing more than once, believe me. article I, article II, the whole catastrophe.

Look, the fact is that article I, though it precedes article II, only confers the lawmaking power, not the power to make treaties. Professor Ackerman never attempted to answer the fundamental textual point that without a clear, constitutional distinction between

the two, much of the rest of the Constitution, wherein, for example, the States cannot make treaties at all, whereas they can make other kinds of international agreements with congressional consent does not make sense. He never even explained how to make sense of all that.

He says near the end of his remarks that he thinks the *Chadha* decision, the Supreme Court's decision of about 11 years ago invalidating the legislative veto, "is absolutely correct."

Well, what did *Chadha* do? It said that article I is not a panacea. It said that the fact that Congress might think it fitting and proper to delegate a kind of veto power to itself, or to one of the two bodies, cannot be justified simply by invoking the name of the great John Marshall and the language of *McCulloch v. Maryland*, because the structural protections of the Constitution, including bicamerality and presentment—protections that in part involve the intersections of article I and II in *Chadha*—cannot be circumvented just because you wave the magic wand of the necessary and proper clause.

But to read the Constitution the way Professor Ackerman does, it would follow that if Congress thought it necessary and proper to vest the appointment, let us say, of the Secretary of Commerce and of the Secretary of the Interior not in the President with the confirmation of the Senate, but in the House of Representatives, why, that would be fine, because it would be the exercise of article I power.

And if you look at the very paragraph in which both the appointments clause and the treaty clause appear, the word "only" appears in neither. It is just law professor talk to make a lot turn on the presence or absence of the word "only."

The fact is that, as Professor Ackerman himself concedes when he tries to show how revolutionary the post-World War II developments were, the natural reading of the text was not that the Senate has a monopoly over all international agreements. Nobody ever argued that. That is all James Madison was denying. I have read his statement. No, that was not the understanding.

But the understanding was that there were some international agreements that so affected the Nation's sovereignty that they could not be promulgated simply by the mere majority of both Houses, though implementing them legislatively would in most cases require bicameral legislative action.

Now, Professor Ackerman says that it would be unusual to find in the Constitution anything that gives the Senate a monopoly. Well, that is nonsense. You have a monopoly over confirming, let us say, Supreme Court Justices.

When the Constitution wants to provide structural alternatives, it is very explicit. Why, in article II itself, where in the adjacent clause it talks about appointing principal officers and inferior officers, it says that the Senate shall confirm them, but it says, as to inferior officers, "the Congress may by law invest the appointment of such inferior officers in the President alone, in the courts of law, or in the heads of Departments."

We are dealing with a constitutional provision not read in a vacuum, but a constitutional provision that knows how to talk about the alternative path that Professor Ackerman now says was there

all along. Yes, it was there all along for international agreements that are not treaties.

Now, let me say just a few words about Professor Ackerman's suggestion as to precedents. The first and most fundamental is that having done it a few times does not make it right.

The second, and perhaps equally fundamental, point: Professor Ackerman is terribly upset and thinks it terribly unpatriotic to question America's commitment to Mexico and other countries. Well, then, he should remember that it is a standard technique of adjudication, if this matter were ever to reach a court, not necessarily to reach back in time and make a ruling fully retroactive. But I am not talking about inviting courts to invalidate NAFTA or agreements with Canada or Israel. I am not sure, in fact, that these issues would be properly justiciable in court. That is a tough question. But this body, and not just the judges of the United States, takes an oath to exercise its constitutional judgment, which is what I am asking it to do.

With respect to the attempts by Presidents Truman and Eisenhower to do 50 years ago what finally President Clinton has succeeded in doing now, to commit the United States to membership in a World Trade Organization with teeth, I am completely at a loss to know what it proves that they tried and failed to do something which at the time I would have argued, had I been around, would have required the Senate's treaty confirmation powers.

Now, there is a lot of apocalyptic talk in Professor Ackerman's discourse. He says that perhaps NAFTA would be Professor Tribe's next victim. He accuses me of some hidden, unpatriotic program of advancing last-minute constitutional objections. I do not have any special agenda here. I am not representing anybody. I would not enjoy bringing down something that I think is probably a good idea, and I have no illusions that I will do that.

It seems to me that it is up to the Senate to decide both now and prospectively when, if not now, a commitment to an international body with real power does deserve the special sanctity of treatment as a treaty.

My view, he says, is unacceptably formalistic, because the House, too, represents the States. We all know that. The House, too, will be heard from when it comes to implementation and the enactment of implementing legislation, but it has been grammar school stuff for a long time that part of the great compromise that created this country was to have a body in which the little States—South Dakota, North Dakota, Alaska, Nevada—have the same representation as the big ones, and it is only the Senate where that is true.

He says that the Senate under my view remains a full partner. Yes, but that is not the point. The point is not whether the Senate scores enough points. The point is not whether the Senate should feel good about itself. The point is that the Constitution is quite specific about treaties.

He says that when the Senate does exercise the treaty power, it is kind of undemocratic. I guess the whole Senate is kind of undemocratic—the filibuster rule, the two-thirds rule, and many other aspects of the Constitution. Democracy is not pure, automatic majority rule. It is structured governance in accord with laws subject to certain protections of rights, and I am not ashamed to be

defending the rights of minorities here, although they do not happen to be racial or religious minorities. They may be small State minorities.

Finally, Professor Ackerman says that all revenue bills must originate in the House, so we ought to involve the House. That is a fairly desperate argument. I am not suggesting cutting the House out of revenue-raising, insofar as that may be necessary to implement the Uruguay Round, and I frankly do not think that has anything to do with what we are doing here.

But when you look at the core of it, what precisely is Bruce Ackerman urging upon you? I think he is urging that absolutely any agreement the President wants to make with foreign governments, no matter what it does to our sovereignty, no matter how it rearranges the relationships between States and the executive branch, no matter how much it subjects States to cross-retaliation, it just does not matter; if the President chooses to put it on the fast track, there is no constraint under the treaty clause.

I do not think that that is an acceptable reading of the Constitution, and certainly to say that this body signed on to that radical constitutional reading 20 years ago, when it created the fast track, is revisionism of the worst sort. When this body created the fast track for trade agreements, if someone had told it that that would mean that without Senate treaty processing the United States could subordinate the sovereignty of the States to a global trade organization, I think a few people might have had a bit of pause.

So, I do not think that Professor Ackerman has dissuaded me from my view that the Senate should exercise its judgment about whether, indeed, as I believe, this is a treaty by any definition.

The CHAIRMAN. Thank you, sir. Professor Ackerman.

Professor ACKERMAN. Thank you very much.

Let us begin with the end of Professor Tribe's remarks. I think it would be of interest to you to know that just at the time the first fast track procedure was enacted in 1974—of course, it has been revised, and as we know, it is going to expire—the Senate did, in fact, have the very debate that Professor Tribe is asking you to have again, and I think it would be a good thing. I do not think this is the proper context, a last minute constitutional objection, but I think it would be a good thing.

But between the years 1974 and 1977, there were a series of debates in the Senate on something called the treaty powers resolution, in which the status of the congressional-Executive agreement was broadly discussed in the Senate, and there were a few Senators who believed, with Professor Tribe, a small number, who read the word "only" into article II and ignored article I. They lost in 1974, 1975, 1976, and 1977.

Under the treaty powers resolution, just for your interest, if a single Senator objected to any congressional-Executive agreement, the objection would then serve as a bar for the consideration of any appropriation bills under the congressional-Executive agreement.

This proposal was rejected, and at the end, after a long debate—serious constitutional debate—and at the end, the Senate decided that the preexisting practice should continue, that the Foreign Relations Committee, or the Foreign Affairs Committee, which is generally in charge of this type of question, should continue the prac-

tice of consulting with the State Department and the President as to the appropriate form.

So, it is not the case that this decision to exercise the powers vested in the Senate under article I has been sort of inadvertent. It is the product of serious deliberation time and time again. The treaty powers resolution and the Trade Act of 1974 were being considered at the same time. The Senate thought about the relationship between article I and article II, and there has been an ongoing Senatorial consensus that Madison was right.

Now, Madison's remarks were not made at random, but in connection with the most fundamental treaty, by Professor Tribe's criteria, of the early Republic: the Jay Treaty. This treaty required State courts to cooperate with the collection of debts incurred by the colonists to England, and James Madison's views were my views. I also stand upon the opinion of the American Law Institute, which did, indeed, consider this question at great length and this restatement is a consensus document.

This is just not the time to risk destabilization, Professor Tribe, not only of this agreement, but many, many others. The idea that we should rely on the courts to avoid complete destabilization does not seem one that is worthy of deep consideration and, moreover, destabilization will occur immediately. Immediately, not in the light of a lawsuit.

I think that the International Monetary Fund would have, or the World Bank, or Israel, would have a perfectly good reason to ask immediately why the Senate has stopped considering the WTO in response to the constitutional objections of Professor Tribe. If the Senate dropped such a great, decade-long project, surely Israel or the IMF should ask whether its congressional-Executive agreement is valid? This is a very fair question.

Thank you very much.

The CHAIRMAN. Thank you, Professor Ackerman.

I noticed your hesitation in calling the Foreign Affairs Committee the Foreign Relations Committee. The fact is, on the House side it is the Foreign Affairs Committee. Over on the Senate side, we call it the Foreign Relations Committee, because we are too old to have any affairs. [Laughter.]

Both of you now have given either side, whatever view you take, tremendous credibility, because rather than, for example, politicians arguing, and our friend Ambassador Kantor finessing, we can go right to the point.

Does this agreement, treaty, whichever, contain a veto power for the United States of America? Professor Ackerman, do you find a veto power in this GATT agreement?

Professor ACKERMAN. This is, of course, the subject of the next panel.

The CHAIRMAN. Oh, you—come on. You are a law professor. I was just going to ask what page and what line. Where do you find the veto?

Professor ACKERMAN. My view is actually serious and considered on the constitutional questions. I am just an amateur so far as the technical elaboration of the World Trade Organization is concerned, and I frankly would prefer to pass on questions which my opinion is—

The CHAIRMAN. Well, I appreciate that. What happens is, Professor Tribe did give at least this Senator credibility, because when asked yesterday, the Special Counsel of the United States Trade Representative said, "Well, article IX," and then he points to the language that says, "shall operate by consensus." Now, consensus is not a veto. But he did not read further, where it says, "wherein you do not obtain a consensus, thereupon you go to a vote. One nation, one vote."

So, nowhere in this Uruguay Round of GATT, can I find a veto, and I am confident there is none, but at least we have got one law professor that has searched it thoroughly and read it, and has taken that position.

Professor ACKERMAN. Senator Hollings, I think it should be clear that my position is that this is not fundamental for your judgment as to whether it should be a congressional-Executive agreement or not.

Consider, for example, SALT I. Now, this was an agreement that had fundamental consequences on the lives and prospects of all Americans.

The CHAIRMAN. We voted on that in the Senate as a treaty.

Professor ACKERMAN. No, SALT I is a congressional-Executive agreement, and that is why I wanted to emphasize the large number of precedents that one has to consider before one soberly reaches the conclusion on the constitutional merits. I restrict myself to the constitutional merits. I myself do not have a considered judgment on the economic merits of the agreement.

Professor TRIBE. Mr. Chairman, could I just add a word about SALT I? It is true that the Interim Agreement on Strategic Offensive Arms was approved by joint resolution by Congress in 1972, but it was explicitly not presented as a treaty because of its limited duration. It expired in 5 years.

It was expected to be replaced by a permanent treaty. Indeed, it led to the ABM Treaty, which was so processed by the Senate, and when SALT II was presented as a more enduring framework, it was quite plain to President Carter that he had to put it forth for ratification as a treaty in 1979. Of course, he failed.

Perhaps the lesson was that when complying with the Constitution will not work, you learn to circumvent it, but I do not think that is a lesson that this body wants to teach.

Professor ACKERMAN. May I make a point of fact here? First of all, President Carter did, indeed, consider proposing SALT I as a congressional-Executive agreement in 1979, and the treaty did not fail. It was withdrawn after Afghanistan.

As to SALT I, one suddenly begins to understand the difficulties involved in Professor Tribe's exercise of dogmatic legal judgment. Only his view, a fundamental agreement that has a 5-year term is not a treaty, even though it is, in fact, risking the lives of all Americans. Nonetheless, Professor Tribe denies it is a treaty, and affirms that it is a consistent use of congressional powers under article I.

Well, if that is the kind of judgment that Professor Tribe thinks the Senate should engage in, I am all for it. It implies that the World Trade Organization's status as a congressional-Executive agreement cannot be determined by some test as simple as whether

the United States can veto WTO decisions. Instead, the Senate must balance this single factor against other considerations—like the need to involve the House, given the traditional and important role of the Ways and Means Committee in the House in revenue raising. That is the kind of judgment I am saying must be exercised and has been exercised, by the Senate in deciding to use its article I powers.

Professor **TRIBE**. I really think that misleads this committee, not intentionally, but it misleads it. Of course, a lot of stuff that is done by Congress risks the lives of Americans without a treaty. When Congress authorizes the building of nuclear weapons, that risks life. That is not the test. The test is whether sovereignty is implicated. That has always been the test.

We are only talking about how to figure that out. That is why it makes a fundamental difference whether an agreement draws the United States into an international organization which can impose enormous sanctions on the whole country lawfully without any possibility of veto. That is not some novel professorial gimmick. When the chairman asked about it, I think he was getting to the heart of the matter.

And it was not some professor who first raised the question whether this did not need to be regarded as a treaty at the last minute. It was Senator Byrd on the floor of the Senate back in July, and it was in response to the question he raised that I expressed what I thought was the only judgment that an honest constitutionalist could express.

Professor **ACKERMAN**. SALT I deeply limited the sovereignty of the country in very fundamental ways.

The **CHAIRMAN**. Well, Professor Ackerman, I have looked upon, in a practical sense, and, of course, no doubt constitutionally could be mistaken, but it appears obvious that the concern in the section of article I, section 8, giving the Congress the power to regulate foreign commerce, was with respect to tariffs—the very second bill that ever was enacted by the U.S. Congress on July 4, 1789, was a tariff bill. They were not thinking of those things that affected all of the citizenry in such a pervasive fashion.

Specifically, I find a little looseness when you talk about the result of many years of fruitful collaboration between Congress and the Executive should serve as a constitutional exemplar for future decisionmaking.

I wish you would have been here in December, when we were trying by long distance to coach and talk with our representatives in Geneva. We had been promised an ear. We had been promised a 15-year phaseout of the multifiber agreement but we were presented with a 10-year phaseout. We could not get a full hearing. There were not what I would call fruitful consultations.

We have not had an opportunity here to go over this. Yes, the two committees that I call the college of cardinals, they meet in camera, and incidentally, let me alert our press friends, we found one rabid freebie in there for pioneer preferences. Yet another one was a gift to a bankrupt airline. One was found with respect to the interest rate on savings bonds.

And I hope this Woodward-Bernstein press crowd, rather than trying to look to see whether we had a cup of coffee with a lobbyist,

read it thoroughly to find where the freebies are located in this so-called treaty, because we cannot amend it, we cannot read it, we cannot discuss it, we cannot debate it.

Now, following—there is nothing like the World Trade Organization in the NAFTA agreement specifically, and then when you stretch to say, well, oh, the House has the ability to raise revenues, actually that is the tax authority, but I immediately thought of all the tax treaties, and I have in my hand, for example, the tax convention with the Slovak Republic, October 8, 1993, and we have had hundreds of these with other countries by treaty, and the House did not have that revenue-raising measure that you referred to in another part of the Constitution.

Specifically, what would this GATT agreement have to contain to comprise a treaty in your constitutional mind?

Professor Tribe has made it very clear that he would not try to delineate specifically, but he did give four different tests, as I remember, and that if it creates a governing entity that affects all State and Federal laws, the reciprocal commitment accepts as lawful and realistic, without the ability, really, to appeal, or avoid it, the sanctions, and effects the economic life of everyone in a State, that seems to go past mere article I, mere commerce. That seems subject to a treaty to this Senator's mind. But you say not.

What would GATT have to contain in order for it to be looked upon and treated as a treaty?

Professor ACKERMAN. Well, I think you are asking the right question. I would respectfully come out with a different answer. The question is, is the GATT a necessary and proper way of regulating foreign commerce, given John Marshall's interpretation of what "necessary and proper" means—"let the end be legitimate and all means which are appropriate, which are not prohibited, are constitutional."

Now, if you, in your judgment, believe that the World Trade Organization cannot be understood as a regulation of foreign of commerce, well then, we would disagree. I would say that the World Trade Organization is a paradigmatic example of a regulation of foreign commerce.

Chief Justice Marshall, after all, gave his great opinion in *McCulloch v. Maryland* on the status of the Bank of the United States, which was an entity not specifically mentioned in the American Constitution. The critics, the people who wanted to declare the bank unconstitutional, were saying, well, the text does not say you have the right to create the Bank of the United States. Similarly, the text does not say that you have a right to create the World Trade Organization.

But Marshall rejected this kind of argument. He said that the grant of the power to regulate both interstate and foreign commerce means that any institution, the Bank of the United States or the World Trade Organization, which is instrumental in a reasonable way with the policy goal, is within the powers of article I.

So, I would suggest that the WTO provides us with a paradigmatic case of regulating foreign commerce. So, the discipline that I would suggest is that you have to go through all of the powers granted to Congress and ask yourself whether the World Trade Or-

ganization has a reasonable relationship to any of these powers. That's, of course, on the constitutional level.

The question of whether WTO should be rejected for many of the policy reasons you have suggested, well that is an entirely different question. I really try very hard not to confuse my judgments of constitutional law with my judgments of the merits of particular programs.

The CHAIRMAN. Well, I am asking not just on the merits, because even Professor Tribe supports the GATT. He opposes the unconstitutional approach, as I understand, but says it looks like to him that it is a pretty good agreement. He is a strong supporter of the President, and probably as a Senator without this constitutional inhibition he would probably vote aye when the roll was called.

But it is more than just foreign commerce. But as we say at home, oop, and a little bit more. It is domestic lives that are being affected here, because commerce and trade now has developed into nontariff trade barriers, rather than just tariff barriers.

We have got child labor involved here, we have got worker's rights involved, we have got cartels involved, keiretsu. All of these things are the subsets of international trade, not just a boatload of stuff dropped on a dock back 200-and-some years ago at the time of the Framers of the Constitution.

It is more than commerce; it affects all the lives, and affects the States in their findings like proposition 65 in California, regarding pesticide labeling, which could be subject to a GATT challenge.

We know from the European Commission, we know from Japan, that they find section 301 violates the GATT. We are committing to change our laws or face the sanctions if we do not follow through on the commitment. Then that to me is more than just article I and regulation of commerce.

If anything has ever reached the treaty level, let us put it that way, that affects all the lives and every phase of life and law, it would be this Uruguay Round, it seems to me.

Professor ACKERMAN. Well, I agree these are serious, substantive concerns, but as a constitutional lawyer, I have to think of commerce as a general idea that embraces both domestic and interstate commerce and foreign commerce. Think of all the things that we consider commerce for purposes of article I. The civil rights laws are justified as regulations of commerce. The Environmental Protection Agency is justified as a regulation of commerce. It is much easier to say the World Trade Organization is fundamentally concerned with the regulation of commerce than to reach the same conclusion for the EPA.

What else is the WTO concerned with if not commerce? It might be a bad policy, a bad way of regulating commerce, but if it is not regulating commerce, I wonder what would qualify?

The CHAIRMAN. Let me yield. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Gentlemen, thank you. It has been a very, very interesting discussion, and I would simply say, Mr. Chairman, that you and I have had some experience on these things. We get into these academic discussions, and I guess probably I would agree with you that both of our witnesses, while they disagree on the legal implications of this, may both be for the GATT agreement, or might be

more the GATT agreement also in the end, but I have some grave reservations.

It is not so much the GATT agreement, it is the implementing body called the World Trade Organization. You seem to say, Mr. Ackerman, that you do not see anything wrong with the World Trade Organization. I see a great deal wrong with it, because they are going to be the referees with no real appeal on the one-man-one-vote principle, which places the United States of America, in my view, at a distinct disadvantage.

So, it is not GATT so much, it is the referee that I am concerned about, and the Senator from South Carolina, my dear friend, will recognize what I am talking about when I am suspicious of who the referees are. Nebraska has gone down south, in South Carolina, and played some football, and they not only bring their football team but their own referees. [Laughter.]

I am worried about other nations bringing their own referees.

Let me put it to you this way. As very dedicated legal scholars, what about due process? I think that you would both agree that the U.S. Constitution guarantees due process. If a U.S. citizen were to be penalized with a trade sanction as a result of the WTO, the World Trade Organization, and would be taken and decided by that panel which proceeded in secret, which decided in secret, and then voted in secret, would that U.S. citizen be deprived of his or her constitutional rights of due process under that kind of a system, or does that not apply?

Professor TRIBE. Senator Exon, I think that if we were talking about sanctions being applied directly to individuals by the WTO, there is almost no doubt in my mind, especially given the absence of conflict-of-interest rules, given the secrecy, given the absence of anything more than cosmetic possible representation at the discretion of the Trade Representative, that it would clearly be a violation of liberty or property without due process of law.

As a matter of constitutional doctrine, the States, however, are not deemed persons, and the relevant constitutional provision would be the fifth amendment, which prevents the Nation, even by treaty, from depriving any person of life, liberty, or property without due process of law, so that the legal analysis would be that if a State were a person for the purposes of that clause, it would have, I think, an open-and-shut constitutional challenge whether this was passed as a treaty or not.

Now, of course, in the end, as the chairman points out, it is persons that are at stake here. The States are abstract constructs there to protect the people that they represent, and so it may seem somewhat formalistic to say that because the States cannot invoke the Due Process Clause that there is no constitutional concern here.

The absence of any review in an article III court, the absence of the normal, procedural safeguards before severe adverse impacts are imposed upon American citizens, I think, is a legitimate subject of constitutional concern. It is quite separate from whether this is seen as a regulation of commerce or whether it is seen as an attempt to exercise the treaty power without the safeguards.

Senator EXON. Professor Ackerman, do you have any comment on that?

Professor ACKERMAN. If I understand Professor Tribe correctly, he is saying that so far as the States are concerned, there is no constitutional objection, and I agree with that.

Senator EXON. Gentlemen, the current GATT agreement that we have in place now uses a term, "contracting party" to describe participants. The agreement that we are now being asked to approve, the one before the Senate, uses the term, "member" to describe the participants. Is there any legal significance to that distinction?

Professor TRIBE. Senator, I do not want to pretend to have thought that through, and without having thought it through, I do not want to offer an opinion.

Senator EXON. Professor Ackerman.

Professor ACKERMAN. I am afraid I am in the same boat. I believe that I would have to check that. There have been any number of congressional-Executive agreements, for example, the FAO, in which the parties are described as members. I would be surprised if this verbal change were constitutionally significant. If I come to some clear view of this, I will let the committee know.

Senator EXON. Let me get your view, if I might—I am back to this one-man-one-vote concept we talked about a great deal, and I think you know what our concerns are in that area. When it comes to elections, I have always been strong for one-man-one-vote, but I have some concerns about that when we get into the international area.

The United Nations has a Security Council where we clearly have a veto power, and although it has been discussed with many of the panelists here, it is my conviction, at least this time, that we have not even a minimum veto power under the GATT agreement as it has been presented to us.

The IMF grants voting rights based upon contributions, of course, and the GATT has operated as a consensus for many, many decades, and that is changing very dramatically. I think we would generally agree with the proposal that has been made to us as a result of the Uruguay Round and all of the debate that is taking place. Even the U.S. Congress does not operate by one-member-one-vote, as has been pointed out by you here this morning.

I understand that the 1955 version of ITO included a body similar to a security council, made up of top 10 trading nations. Is there anything inherently fair or unfair about the World Trade Organization, one-person-one-vote rule? Are there any similar multinational institutions that operate in that fashion? Is there any comparable international agency with this all-powerful World Trade Organization operating in secret, and operating on the one-man-one-vote international principle?

Professor TRIBE. Senator, I think there is a mistaken premise in your question that I really want to be as clear about as I can, and I think the chairman may have stumbled onto the same issue.

Yes, it is true that under article 9, paragraph 1 of the WTO agreement, there is the one-person-one-vote approach in certain circumstances, and I think the question you raise is a very good one. Does that give enough protection to us? Is it unusual?

But what perhaps you have not focused on is that when it comes to decisions by WTO panels that find that one of our laws, either an act of Congress or a law of a State, is illegal under one of the

GATT agreements, that decision is treated differently, and not in a way that gives the United States more voice. It is less than one-country-one-vote in this sense.

That is, I think you all have this fat volume that was distributed a couple of days ago, and just for your convenience, I will tell you that what I am quoting from appears on page 1,670. It is in article 22, paragraph 6 of the dispute settlement understanding. Though it is buried in fine print, it is going to make a huge difference in the future of this country. It makes very clear that the trade sanctions that are to be imposed within 30 days of a certain period of time will be imposed unless the DSB—that is, the decision body decides by consensus to reject the request for sanctions. Then it explains that consensus means unanimity.

So, that means that if 113 countries say, we think this was outrageous to find Nevada or California or South Dakota or Alaska or the United States of America guilty in these circumstances, the fact that there are votes the other way prevents the sanctions from being lifted. That is not one-person-one-vote. That is much worse, and that is the way this works.

With respect to sanctions imposed upon an offending State or country, the only way that one can reverse the decision to sanction is to get unanimity. Now, I do not know how long the U.S. Trade Representative thinks people will not focus on that, but I sure hope they do now.

Senator EXON. Well then, having made that statement that you just made, did I mischaracterize your position as probably being in favor of the approval of the Uruguay Round? After listening to the statement you just made, it sounds like you might not vote for it. Maybe you were wrong in your conclusion.

Professor TRIBE. I happily do not have the responsibility of a Senator to decide on balance whether this supposed hundreds of billions of dollars of benefits—

Senator EXON. Well, there is not very much balance. There is not very much balance, I suggest, Professor Tribe, and to you, Professor Ackerman, in my view, when you very clearly have laid out what many of us have been asking questions about of other panelists. Thank you very much for bringing it out. I think it was very informative.

My time is up, and I would yield.

The CHAIRMAN. The witnesses have really favored the committee.

I think Professor Ackerman has a flight at 12:30 out there at National, so let us see if we can move along, and we will keep the record open for questions. I do not want to cut anybody off, but I was just given this note, and we would like to try to convenience them, because they have certainly done us a favor.

Senator STEVENS. I will do my best. I join you, Mr. Chairman, in thanking the two professors for being here. It takes me back to the years of law school, and I think we are honored to have the contribution that each of you make, and I will tell you, Mr. Chairman, yesterday, seeing who was coming, I got the documents that were filed in advance and went home and spent the night reading them, so I was prepared to ask questions for a lot longer than you have just extended to me, but I will be as short as possible.

Let me start with Professor Ackerman. Professor Ackerman, having read your comments and your letter to the President, and listened to you this morning, if you are correct, is there any document that the President must—must send us as a treaty?

Professor ACKERMAN. Definitely.

Senator STEVENS. What is it?

Professor ACKERMAN. Any document that in your judgment does not involve the exercise of the delegated powers to Congress under article I is such a document.

So, for example, as Professor Tribe was explaining, in *Missouri v. Holland*, the Supreme Court at least accepted the idea that a migratory bird treaty was not within the commerce powers as it was then understood and consequently had to be selected as a treaty.

The CHAIRMAN. Would you yield? Professor, you have got under article I the power to declare war. What you are saying is, then, since article I says you can make a law, and you have got the warmaking law powers, then you can end the war without a treaty; is that right?

Professor ACKERMAN. This is precisely the theory that supported SALT I.

The CHAIRMAN. Well, SALT I did have the ABM Treaty part. You just referred to the other part, but we had a two-thirds vote of the ABM Treaty.

Professor ACKERMAN. But the SALT I agreement, if it was constitutional, which I think it very much was, fell under the war powers—certainly SALT I did not involve commerce. It involved the construction of the war powers.

Senator STEVENS. I get a little provincial around here, as most people know. We have a Canadian-U.S. salmon treaty, primarily because of the disputes between the States of Washington and Alaska and Canada, and we entered into that treaty. The two new administrations, one in Canada and one in the United States, just walked away from it, and they are now dealing with it just with an agreement.

Now, one of the reasons we entered into that treaty was because of the other provision that says, no State may make a treaty with a foreign country.

Now, do we know, does a treaty mean the same thing in the provision that deals with no State being able to make a treaty, and the treaty clause that you are addressing now? Does the word "treaty" mean the same thing in both sections of the Constitution? No State may enter into a treaty, as opposed to the President having the power, with the advice and consent of the Senate, to make treaties? Are they the same?

Professor ACKERMAN. Yes, but that does not touch the question of what the proper construction of article I is.

Senator STEVENS. But are you not just saying, really, that a treaty is anything any President decides is a treaty, and really that no one has the power to decide, including the courts, and I hope you are familiar with one case that Professor Tribe quoted in his document, where the Supreme Court treated what was considered to be an agreement as a treaty under the statute passed by the United States defining the jurisdiction of the court of appeals. Did you agree with that decision?

Professor ACKERMAN. Well, on the fundamental point, my position is not that the President can call anything an agreement. It is up to your constitutional judgment, the constitutional judgment of the U.S. Senate, which is placed at a strategic switching place, because it both exercises article I powers and article II powers.

I absolutely agree with the idea that the Senate and not only the President has this fundamental responsibility of constitutional judgment. I believe, however, that the World Trade Organization does involve the regulation of foreign commerce within broadly acceptable constitutional definitions of the term, and therefore the definition of the notion of a "treaty" is not central. The definition of foreign commerce, and whether that is broad enough, is central.

Senator STEVENS. Representing a small State, I think I raise constitutional questions to the Senate more than anyone else. I also get overruled more than anyone else.

Professor Tribe, one time that I was not overruled in terms of my objection, back in 1978, the Government decided to enter into a treaty with the British which was called the U.S.-United Kingdom Tax Treaty and stuck way in there was a little provision that would have barred the unitary tax method.

We at that time refused to consent to that tax treaty because of the objection that I raised. It is a very important tax for my State. I note with interest that the document that we are all looking at now, the report on the U.S. barriers to trade and investment issued by the European Commission, specifically deals with State unitary income taxation, and Professor Tribe, you raise the question in your document concerning the basic problem of State taxation.

Now, when I got to the office this morning, my staff told me that we had made a reservation to that portion of the document, and I raised a question, well, so what? If the European group decides they do not like unitary taxation, what can they do under this agreement? I was told, well, we have reserved it, and if they attempt to deal with it, we can withdraw.

And I said, well, we can withdraw from anything, can we not, under this, and they said, yes, we can withdraw it any time. What is your answer, each of you? What can we do, those of us who represent States who believe in unitary income taxation, and I am sure you know there is a recent Supreme Court case which upheld that concept, which was just dealt with.

The Senate, as a matter of fact, filed an amicus brief in that, and Senator Dorgan and I and others joined in urging the Court to uphold the unitary taxation. What if this WTO now says—and we have got one vote, and they say, we adopt the European position on unitary taxation? What is the remedy of those States that would face, as I understand it, potential sanctions under this document from the World Trade Organization?

And apparently the WTO could compel our Federal Government to either change those State laws, which would be a nice task under our Constitution, or to take some compensatory action to satisfy the WTO. What happens to us, who want to defend unitary taxation, which the Supreme Court has recently upheld under our system, when the WTO comes into effect? Professor Tribe.

Professor TRIBE. Senator Stevens, I think those of you in that position, and I think there are some 16 States and the District of Co-

lumbia, would be out of luck, and if you could find some way to persuade the Trade Representative not to bring suit to bring you into line with a decision of a WTO panel finding the particular unitary tax to be GATT or GATT's offensive, then you would at least avoid having a Federal court strike down your law, but that would not, as I suggested in my testimony, prevent you and your sister States from being subject to retaliation.

Now, it is true that if the United States does not like the retaliation, it can try to resurrect section 301, and counter-retaliate. We will be told by the WTO that that is illegal.

We may then say, "Well, if you think that is illegal, we will withdraw," but that is not much of an answer, as I think your question suggests. We do not enter into a permanent alliance of this kind to create a new world order of trade only in order to withdraw 6 months later.

And so I think the honest answer to your question is that the unitary taxes of Alaska, Arizona, California—and I could name the States—are then just bargaining chips which the U.S. Government can use in dealing with other countries. I do not know about you, but I do not think I would enjoy being a bargaining chip.

Professor ACKERMAN. This issue, while fundamental, does not affect the basic constitutional question, and so I would prefer not to comment on it.

Professor TRIBE. Could I say a word about that? I do find it interesting. Here is the strategy. None of these things really affects the constitutional question, according to Professor Ackerman. The veto, interesting, but not fundamental. What really has to be submitted as a treaty, he is asked. Well, there is a kind of functional answer, if you can possibly squeeze it into any of the pigeonholes in article I—and I have yet to see a pigeon that will not fit into one of those holes—then, if you can fit into one of those pigeonholes, the President has no choice. The fact is that at the time of *Missouri v. Holland* in 1920—I do not know what kinds of birds were flying between United States and Canada, but they were not pigeons—but there was a notion that article I did not extend to migratory birds, and therefore a treaty was entered with Canada that expanded under the necessary and proper clause the implementing power of the U.S. Congress. But it was never suggested in that case, or in any other, that the treaty clause suddenly evaporates as a source of protection just because we happen to be living in an era when just about anything can be called commerce.

The Supreme Court, for instance, has a case before it now involving an interesting attempt at legislating gun control. It is a law that says, I think, that within 1,000 feet of a school you cannot have a gun, and it is being defended under the commerce clause.

Now, I do not think the civil rights laws are hard to defend under the commerce clause, unlike Professor Ackerman. I think they were easy. Interstate commerce was clearly adversely affected by race discrimination in places of public accommodation.

This one is quite a stretch. Now, I take Professor Ackerman's position to be that if, and only if, the Supreme Court of the United States says, "Oh, well, there really are limits to the commerce clause; you cannot pretend to be using the commerce clause when

you are saying you cannot have a gun within 1,000 feet of a school."

If the Court says that, then the President would have to find some country with which to make a treaty about guns, and then you could pass the law. I think that gets the whole constitutional structure inside out and upside down.

That is not what the treaty clause is about. It is about significant limitations on sovereignty, and I think he admitted it when he said the concept of treaty means the same thing in the constitutional provision that prevents States from making treaties, ever. That means the same thing, in that context, that it means where it says that the United States can make a treaty with the advice and consent of the Senate.

Well, if it means the same thing, surely you cannot define a treaty vis-a-vis a State in terms of the breadth of some grant of affirmative power in article I. You have to define it in terms of whether a State is giving up some significant, enduring form of sovereignty to another power. That has to be the critical element, and it is proved by the way in which that word is used identically in the two contexts.

Professor ACKERMAN. Professor Tribe is missing the main point, first, that the article I powers are independent of article II powers. It certainly is the case that if the Supreme Court decides that the Safe Schools Act is unconstitutional under the commerce clause, then the only way that could be addressed would be through a treaty, and I would agree that the use of a treaty in that context would also be improper.

The second point is that Professor Tribe is not correct in saying whenever the President calls something an agreement, then the Senate is bound to go along. To the contrary, the Senate must make, and has in this case made, an independent judgment as to the balance of advantages.

There are pros and cons on both the article I side and on the article II side. In this case, I think, the balance of advantages decisively tips in favor of article I. The Senate was right in so holding when it went along and passed this fast track procedure for the WTO. But this is a judgment that not only the President but the Senate has and should make.

It is very dangerous, however, to lead an assault on the expansive conception of interstate and foreign commerce that has been the foundation of much of our legislation. We cannot afford to be transfixed by this particular issue, however important the WTO may be. The Environmental Protection Agency is also justified on the ground that it is regulating commerce. There is no other ground.

Senator STEVENS. Gentlemen, I am running out of time. If I could interrupt you there, I am glad you mentioned that, because I was going to raise the constitutional point of order against fast track for NAFTA primarily because of article I, section 7, that states all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills.

But with the fast track, we do not have the opportunity to protect small States with amendments to such bills, including this

one. I was advised that I was late. I should have raised an objection to the fast track procedure itself. We will see again with this bill what the Senate wants to do, but respectfully, Professor Ackerman, the Senate has not made up its mind yet about this proposal.

The Finance Committee did in the House Ways and Means Committee, but so far as I know, the Senate has not made any judgment yet on this WTO.

Let me close by saying this. Gentlemen, I wish that we had more exposure to those of you who spend your lives reviewing the Constitution.

I am disturbed, for instance, about the mandates to States that require them to spend money. I thought that except where there are express provisions giving the Federal Government power, the State retained their powers, and I do not see yet how the Federal Government can impose upon the States and their subdivisions the requirements to raise money to carry out Federal programs.

There are too many people ignoring the Constitution, and we come here, our first duty is to raise our hand and swear to uphold and defend the Constitution. That is awfully tough for someone from a small State that sees the rights of small States being eroded away day after day after day by article I, professor. It is article I that erodes our powers, and I think we ought to be really cautious about this proposal.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Thank you very much, Mr. Chairman. Many of my questions have been covered. I want to especially welcome Professor Tribe, with whom I had a class at Harvard Law School, in evidence I believe, and we used to try to figure out the probative value, I think, the mathematical weight of evidence. Do I remember that correctly?

Professor TRIBE. Yes, I think so, Senator.

Senator PRESSLER. Something like that. They always used to say if you could understand one-half of what Professor Tribe is saying, you are brilliant. I could understand about 10 percent of it. [Laughter.]

In any event, now, I was very interested in what you said about the World Trade Organization, that if any one of them does not vote for the sanctions the whole thing goes into effect. Now, we have juries, I guess, in a murder trial, a jury, so 1 person can veto the other 11 out of 12 people. One person who does not agree can veto the others' opinion. But in any event, would that be similar logic? I guess that would be a veto. Each person in the room has a veto.

Professor TRIBE. But it is sort of the opposite, Senator, because here, once there has been an initial determination of guilt, kind of like the indictment, then unless there is a unanimous vote of innocence you are guilty. That is what is intriguing about this. That is, if there has been a determination by a WTO panel—typically with three trade experts operating in secret, none of them from the United States, perhaps none of them particularly sympathetic to our Federal system—that a particular law of South Dakota, because of the way it affects trade, violates GATT, and at that point let us say nothing is done to eliminate the South Dakota law. At that point, within 30 or 60 days—there are several tiers here—

sanctions can be kicked in by the country that brought the complaint, sanctions not only against South Dakota, but against South Carolina and Alaska. And the only way you can reverse those sanctions is to convince all countries who are signatories of the relevant agreement that you are really not guilty, that you did not do anything wrong. One of those countries can say, I think Pressler did it, and Pressler is then convicted. That is not the jury system that I am familiar with.

Senator PRESSLER. Yes, it is just the opposite; is it not?

Professor TRIBE. Right.

Senator PRESSLER. So, I think you have summarized it. In a jury trial you are innocent unless all—if one of them feels that you are—

Professor TRIBE. Some States do not have that unanimity rule.

Senator PRESSLER. Well, if you have the unanimity rule. But in this case you are guilty if one thinks you are.

Professor TRIBE. Right. Once there has been an initial determination by one of these secret panels that you are guilty.

Senator PRESSLER. Yes. I think that is a very amazing analogy.

Let me ask both of you, what do we do here now? Now, I tend to agree with what Professor Tribe is saying very strongly. What can I do at this point other than vote against the treaty, but I tend to like parts of the treaty?

Professor TRIBE. I have a thought about that, Senator. It is a very deep dilemma. It seems to me that the worst of all worlds would be to feed into the argument that Professor Ackerman is making that attributes to you judgments that you have not really made; that is, for you to vote for this treaty—call it an agreement if you will, I call it a treaty—for you to vote for it on the fast track in a way that says, "We have made a considered judgment that this was perfectly constitutional," is to lay down a precedent that will be cited for all time: "Boy, if this thing did not have to be regarded as a treaty, nothing will."

There is another way, I suppose. That is, one could vote for it with reservations, and I do not mean a technical reservation as with a treaty, but with express reservations about the constitutionality, saying that you were leaving that as a question for another day, that you were going to address the issue systematically as soon as possible, that perhaps those who wanted to make the constitutional argument did come into the picture too late. I would be happy to take the rap. It seems to me that it would be worst of all to vote for this and say that thereby you were making constitutional law for the future along the lines of what Professor Ackerman has suggested; namely, that unless you cannot shoehorn it into article I, the President and Senate if they wish can simply forget the treaty clause. The Senate, too, is bound by the treaty clause. I do not think the Senate can abdicate its responsibility.

I said that was the worst of all worlds. Maybe worse even than that is to say that all this constitutional folderol is just fancy academic stuff—who cares? I trust none of you will say that. I do not think it is too good to say, "I think this is a wonderful opportunity for the country but, too bad, they did not do it right." That is not a perfect solution. I am sure a number of people will vote against this on any of a number of grounds, and one of them may be con-

stitutional, and I am afraid I really cannot help you beyond laying out those options.

Senator PRESSLER. It does present a great dilemma.

Would each of you state, in the shortest of terms, what you think the main distinction between an executive agreement and a treaty is? Now, there is a standard set by a former Senator, Milliken, who was chairman of the Foreign Relations Committee in the 1940's, that is frequently cited. And he says the proper distinction between the two is that when we go beyond conventional matters, duties, customs, matters in foreign trade, and commence to surrender sovereignty, that is the point where the proper field of treaty comes in. Whenever you come to a matter where there is substantial disparagement of our sovereignty, whenever you come to a matter where sanctions may be invoked against the United States by an international body, then you have entered the legitimate field for treaties. That sounds to me like exactly what we are talking about here.

Professor TRIBE. I cannot do much better than that, Senator. I would be happy to rest with that as a first approximation.

Professor ACKERMAN. I think it is terribly important to make a distinction between three different forms——

Senator PRESSLER. Between what?

Professor ACKERMAN [continuing]. Three different forms of agreement making. One is the treaty. The other one is an Executive agreement, by which I mean a unilateral Executive agreement, which is, for example, all that GATT is. And then there is a third animal, which is the one that we are talking about now: the congressional-Executive agreement. I myself am no friend of the unilateral Executive agreement. Indeed one of the reasons why I am in favor of congressional-Executive agreements is because they have been used time and again over the last 50 years to reign in the unilateral Executive actions. And so your distinction between these two animals, the unilateral Executive agreement, which is what I believe that Senator Milliken was talking about——

Senator STEVENS. Well, Professor, how is this a congressional-Executive agreement if we must take the bills that are sent here by the President without any amendment, no discussion, no amendment, no point of order, no question at all to what the Executive sends us? Now where is there congressional agreement there?

Professor ACKERMAN. That is a policy objection to the fast track procedure, not a constitutional objection to the Senate's powers under article I.

Senator STEVENS. But that is what this is.

Professor ACKERMAN. No, Congress gives its assent when it votes. The final vote must be distinguished from the procedures permitted by the Senate. Senate rules may authorize filibusters or fast tracks, or something in between. That is analytically different from the basic point—which is that the Senate will vote on the WTO. But I do want to emphasize that Senator Milliken, in the text record by Senator Pressler, was speaking about a simple dichotomy rather than what we are talking about today, which is a trichotomy.

Senator PRESSLER. Well, I think what happened was that, all niceties and constitutional discussion aside, I think what happened

was some fellows over at the White House or somewhere decided that they probably could not get 60 votes to sustain a treaty, or 67, but they could get 50 or 51 to sustain an Executive agreement. That is my personal opinion of what happened, so they decided to call it an Executive agreement. What do each of you think of that theory? [Laughter.]

Professor TRIBE. I know it is fashionable to be cynical about not only the Senate and the House, but the White House, as well. I think that in this case that would probably be a bum rap. I think that the history of the way this got there is not quite so Machiavellian and calculating. And I do remind you, Senator Pressler, that when it came to NAFTA, it won by a more lopsided majority in the Senate than in the House. It is just not right to assume that generally there is going to be a bias against internationalism in this body. It may simultaneously represent small States and have a large vision about the world.

Professor ACKERMAN. I think Larry is perfectly right about that.

Senator PRESSLER. Good. I have some additional questions for the record, but in order to give Senator Dorgan a chance to ask his questions before we have to leave, I certainly want to thank both of you. But this sure looks like a treaty to me. It sure walks and talks like one.

The CHAIRMAN. Thank you.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. This has been very interesting.

Professor Ackerman, what do you mean when you use the word "destabilization"? You used that several times in the context of, perhaps, I believe, the Senate deciding not to proceed or voting against this GATT agreement because it was a treaty. What do you mean by "destabilization"?

Professor ACKERMAN. I believe that it would send shock waves in the international community if the Senate as a collective body expressed doubts about the propriety, the constitutional propriety, of this agreement. It would perfectly naturally generate great anxiety in representatives of foreign countries who are relying on the U.S. Government's word, which was affirmed by the Congress of the United States. And to say that the agreement, let us say, with Canada or Mexico or Bretton Woods or Israel may be unconstitutional is to say something very serious, and it would be treated as such by concerned governments.

Senator DORGAN. So, you are saying our Government has represented to others with whom they have negotiated that this is, in fact, not a treaty but an agreement?

Professor ACKERMAN. A binding international obligation.

Senator DORGAN. And if subsequent evaluation were to determine, well, really, on a second look this is a treaty, that would be destabilizing and cause anxiety for other governments?

Professor ACKERMAN. It would.

Senator DORGAN. But of course, that is less important than the real question of what does our Constitution provide?

Professor ACKERMAN. Definitely.

Senator DORGAN. The foreign anxiety is a lot less important than our constitutional verification?

Professor ACKERMAN. Definitely. And if I thought it were only foreign anxiety, I would not be here today.

Senator DORGAN. I must confess that there is a certain nourishment for someone who came from a State school to hear a Yale professor tell a Harvard professor that he has missed the main point about article I of the Constitution. [Laughter.]

Professor ACKERMAN. That is what we are paid for. [Laughter.]

Professor TRIBE. I enjoyed it, too, Senator. [Laughter.]

Senator DORGAN. You actually did not look like you enjoyed it. [Laughter.]

Let me ask about the line of questioning that my colleague from Alaska inquired about, the issue of the unitary tax approach, and that issue has gone to the Supreme Court in the *Barkley* case and so on. Professor Tribe, you are suggesting that under the construct of the WTO, the WTO could decide that that violates GATT, and therefore the States would be out of luck and therefore that line of thinking says that affects State sovereignty, which contributes to the notion that you have that this is in fact a treaty; is that right?

Professor TRIBE. That is right, Senator Dorgan, with just one qualification: I have to say that the intersection between the GATT and the GATS, the latter of which deals primarily with tax matters, is another of the arcane, labyrinthine details that I have not mastered yet. So, it may be—and I would not want anyone to think that my overall analysis would be affected by it—that there is some way to thread the needle with respect to the unitary tax.

Could I just add one word about destabilization, the question you asked about? I think it is really much too easy to assume that a constitutional judgment by this massive WTO with its sanction-imposing powers would suddenly, let us say, rip out of the landscape the U.S.-Canada agreement. As far as I can tell, the clearly unconstitutional feature of the U.S.-Canada agreement that the rulings of the binational panels, which cannot be reviewed by an article III court, are binding on the Commerce Department—involves a sacrifice of sovereignty which certainly would have required a treaty to accomplish. It was not done by treaty. I do not think it would destabilize the Northern Hemisphere if the binational panel structure were severed and struck down, and in any case I doubt that the Senate knew when it was voting for the U.S.-Canada agreement that States in the Northwest would suddenly be confronted with that kind of scheme. But it is just too easy to assume that when this body exercises its constitutional judgment it should shudder lest the world tremble at the consequences. I think that kind of scare tactic is not helpful in thinking about a hard problem.

Senator DORGAN. Would you respond to Professor Ackerman's response to you? You talked about the sovereignty being implicated as the notion of when you might construct something as a treaty, and he said SALT I affected our sovereignty or implicated our sovereignty. You did not respond to that.

Professor TRIBE. Well, first of all, he has not elaborated exactly why he thinks it did. That is, it did not change our lawmaking processes, the essence of sovereignty. Sovereignty, in a democracy, is exercised by the people. The most fundamental aspect of sovereignty is the power to make law, State, Federal, local. That is the

core of sovereignty. The fact that one may give up the right to blow up another country or assume the obligation to blow up some of one's own weapons I do not think goes to the core of what it means to be a sovereign nation.

Second, even if I should conclude, although it has not been explained why, that SALT I for 5 years was a temporary abdication of sovereignty for some reason that I still do not quite understand, the most I would say is maybe it was constitutionally required to present SALT I to the Senate for treaty ratification. I think picking and choosing a few select occasions in the past and saying, "We have gotten used to it, so let us do it some more," is like the guy who sits in a bathtub, fills it up with water that keeps getting hotter, and says, "By God, I have gotten scalded. I do not know quite when it happened." It seems to me that one has to start saying, "Ouch," and the fact that there have been past violations, if violations they be, is not much of an argument to me. But still, I do not see, in answer to your question, that sovereignty was deeply implicated there.

Senator DORGAN. Professor Ackerman.

Professor ACKERMAN. First of all, I think that military power is a fundamental dimension of sovereignty. Notice, moreover, when Professor Tribe says that only one part of the America-Canada Free Trade Agreement has a constitutional problem. Well, this is a serious claim to Canada, even if it involves only some part of the agreement.

Let us also take the St. Laurence Seaway, which was rejected as a treaty in 1934 by the Senate, and authorized in 1954 by a congressional-Executive agreement. Well, you know, this is serious business to question such agreements. Of course, I am not trying to engage in scare tactics.

Professor TRIBE. You fooled me.

Professor ACKERMAN. No, no. The reason why I am here is because I believe that article I is a fundamental structure of governance in the United States. However, Senator Pressler's question about how one should proceed in this concrete case is also important. It is a serious statesmanly question, and you have to answer it by taking into account the destabilizing consequences of pushing forward with this constitutional issue at this time.

Senator DORGAN. I would only observe that it is interesting that we go from constitutional law to this question of destabilization, which itself is the larger political debate, and almost every witness who favors GATT has argued that to do anything other than simply ratify, to enact the implementing legislation to sanction GATT, would be fundamentally destabilizing. And I would say to Senator Pressler in response to his question, what can we do, the very construct of fast track to bring an agreement like this under these circumstances to this body is designed to force that choice. That is the problem with it. It says, here is this massive negotiated approach, and you do not have an opportunity to really seriously question elements of it. You can either vote yes or no on all of it without any opportunity for amendment. That is precisely the problem with this approach, and we have not had that restriction on many other very important agreements that have come to the U.S. Senate over many years.

The other false choice that is always proposed here, not just by you, Professor Ackerman, on the issue of destabilization, but the false choice is that there is either this or there is chaos. Those are always the two choices that are given us. It is either this or there is chaos, this or destabilization. That is not the case. Those are not the choices for us, and it seems to me that if this is a flawed agreement, if this agreement is not in this country's best interest, if this agreement is in fact a treaty, then we ought to move down the road to discharge our obligation as Senators.

I think this has been a wonderfully interesting discussion this morning by two excellent witnesses who know they are excellent witnesses because they know this stuff. And I appreciate it very much. I was almost thinking that I have some sort of personal defect to sit here on an almost perfect day with the shades closed being interested in listening to constitutional layers. [Laughter.]

But this is more than just idle interest on the part of everyone on this panel. This is very important. It deals with the future of this country's economy and jobs and economic growth and opportunity, and I appreciate very much both of you testifying. I know that you have planes to catch.

The CHAIRMAN. The committee is indebted to both of you, and we have a staffer who will take you both to the airport, but do not put them on the same plane. [Laughter.]

Thank you very, very much.

We have a very important panel. The record will stay open for further questioning and any other submission that the gentlemen wish to make.

Thank you very, very much.

Professor TRIBE. Thank you, Senator.

The CHAIRMAN. Thank you very much. Could we have Ralph Nader and Ms. Claire Reade come forward? The committee appreciates the appearance of Ralph Nader, consumer advocate for Public Citizen here in Washington, and Ms. Claire Reade, the cochair of International Law and Practice Sections, the Committee on International Trade, the American Bar Association. Ms. Reade, we would be delighted to hear from you.

STATEMENT OF CLAIRE READE, COCHAIR, SECTION ON INTERNATIONAL LAW AND PRACTICE, COMMITTEE ON INTERNATIONAL TRADE, AMERICAN BAR ASSOCIATION

Ms. READE. Good afternoon, Mr. Chairman and members of the committee. I am here today representing the American Bar Association and the ABA's view that the dispute settlement procedures negotiated under the Uruguay Round and the institutional framework created by the World Trade Organization do not detract from U.S. domestic legal powers and do not otherwise create concerns that should prevent GATT implementation by the United States. I would like to ask that my full testimony be included in the record.

The CHAIRMAN. The full statement of both witnesses will be included.

Ms. READE. Thank you.

Enhancing the rule of law in institutional proceedings and disputes involving the world's major trading nations is, in our view as lawyers, beneficial to the United States and to the multilateral

trading system. We do not see a threat to U.S. domestic legal powers in the Uruguay Round dispute settlement procedures, or in the institutional procedures established by the WTO.

Let me begin with dispute settlement. It is important to start with a historical perspective to understand where the GATT 1994 dispute settlement understanding comes from, what it accomplishes, and what it does not do. Let us look at the dispute settlement process under the existing GATT agreements, the so-called GATT 47. The existing GATT, GATT 47, recognized the need for formal dispute settlement processes to make the agreed-upon rules of fair trade that the United States supported credible. Without some kind of accountability, there is a severe temptation for nations not to obey rules, and rules are valuable to countries like the United States that are looking to open foreign markets.

Under the GATT 47, dispute settlement worked as follows: Dispute settlement panels were convened in private, when an issue was raised by a party. Now, settlement was encouraged throughout the formal dispute settlement process, but at the end of the day, if the parties could not reach a solution, a report was issued by the dispute settlement panel pointing out where there were inconsistencies with the GATT rules. Now, the panel decisions were not automatically implemented as part of any country's domestic law. There is no GATT police, there is no contempt power. Rather, countries had to decide how to respond in terms of their domestic legal regimes.

Now, given their international agreement to live by the GATT rules, they should respond. Would they decide to make changes in their laws? Would they settle with the aggrieved country? It was their choice. Under GATT 47, if no solution was found, the injured country could, in some circumstances, be granted the right to use self-help; that is to say, to withdraw trade benefits from the noncompliant country. What happened in practice? The United States and other countries used these dispute settlement procedures, the United States more than any other country, by the way, and the United States won a high percentage of its cases, but the United States, including the U.S. Congress, found that the GATT 47 dispute settlement process was too weak. The United States wanted more accountability from other nations in order to effectively open their markets to our products.

Let me give two examples of the problems with GATT 47: Under the GATT 47, a country that did not like a panel decision could censor it, essentially, not even permit it to become a formal decision, block it altogether. Also, although there was, as I indicated, a right under the GATT to withdraw agreed-upon trade benefits in reaction to a country's failure to make its laws conform to the GATT rules, it was hard to get this right activated in practice.

Congress responded to this GATT weakness by indicating in several instances, including in legislation, some of them are cited in my testimony—that it was important to strengthen the credibility of GATT dispute settlement rules. That is how we got to the GATT 94 dispute settlement understanding. But, as I hope you will see, the changes that were made from the GATT 47 dispute settlement process are incremental changes. They have not created a Big Brother 1984; they have not created a GATT police. The changes

are detailed in my written testimony, but I will discuss a few examples.

The United States did not want other countries to be able to censor the umpire. They wanted to be able to hear the results of dispute settlement. So, there is no more blocking of the results of dispute settlement panels. In addition, the right to withdraw trade concessions was made a more real right. It became a more realistic legal remedy, not just a diplomatic tool, in countries' relations with each other. However, the GATT 94 did put some curbs on the amount of trade benefits that could be withdrawn if you had to use this self-help tool.

The other changes were, likewise, basically, careful progressive evolution from the old GATT, not a radical departure. And important for this discussion, just like the GATT 47, the GATT 94 dispute settlement understanding made no change in the U.S. powers to decide how to deal with the panel report in terms of U.S. domestic law. The World Trade Organization dispute settlement understanding does not implement the decision as U.S. law; it does not override U.S. law, just as GATT 47 did not.

What is the effect on the United States? Well, the United States pushed hard for these reforms because they believed they would be positive. They like the GATT 94 substantive rules, they want other countries to agree to them, and they view more effective dispute settlement as increasing the credibility of the rules that the United States has negotiated. In other words, the United States is not afraid of dispute settlement under the GATT. What will happen, though, if the United States is defendant? Well, generally speaking, the United States believes in these rules. In fact, if it does not, it has made reservations to them. And so it will correct its mistakes.

By the way, speaking of reservations, I should note for the record that there is a specific reservation in the Uruguay Round agreements that is designed to protect States' rights to impose unitary taxes. There should be no fear that that would be subject to GATT challenge.

And if the United States does not believe that it made a mistake in the way it formulated its rules, it is perfectly comfortable thinking about settling its disputes in negotiations with other countries—which is the practical result of what happened in GATT 47 anyway.

The GATT recognizes, as we should, that two countries' relations and interests extend beyond the legal dimension of a dispute settlement panel finding, and they often are able to find ways to ameliorate the situation that is satisfactory to both. If no resolution is possible in the end, in that rare circumstance the United States has to make a difficult decision.

But the U.S. laws can remain intact unless the United States decides to change them. If the law in question remains unchanged, the United States just needs to understand that it will have to live with the legal self-help that has been put into the dispute settlement understanding—that is, a country can use a limited trade benefit withdrawal against the United States up to the amount of the injury the United States has caused by not living up to the international rules and the bargain that the other country thought

it had achieved. Basically, the United States has judged this to be a manageable contract risk.

In short, the GATT 94 dispute settlement understanding offers the United States and its trading partners, in our view, a means to facilitate the removal of unfair barriers to trade to the maximum extent possible, given the sensitivity of national sovereigns.

Now I would like to turn just for a moment to the general functioning of the World Trade Organization, and I am here speaking about the World Trade Organization outside of dispute settlement.

Creation of the World Trade Organization was also an important but incremental change for the GATT system, in our view. The existence of the WTO means that the variety of GATT issues can be addressed in a more coordinated manner. It does not create a new international power center or diminish the rights of the United States or the other sovereign nations who have participated in GATT activities since 1947. Specifically, the fact that the WTO now has formal legal status and the GATT 47 did not have formal legal status in international organizations, means what? It means that the WTO personnel and activities will not suffer from the inefficiencies created for their GATT predecessors. This legal change does not, however, give the WTO any supranational authority to impose views on any of the member states. The WTO is a limited institution.

As for WTO procedures, a number of critics of the WTO argue that the one-country-one-vote rule in the WTO will permit the United States to be overruled on key issues. It is very important to get this straight, I believe, because I believe these arguments are not well founded. First, the WTO explicitly states that it is going to continue to rely on the decades-old GATT custom of using consensus to reach decisions. This is a very ingrained practice in the GATT, and there is no reason to believe that this practice will break down. Therefore, GATT experts and observers believe that it is possible that the formal rules of voting might never be used in the WTO, just as they were never used in the GATT 47.

Second, a number of important protections have been incorporated for the United States into the formal WTO voting rules in the unlikely event they have to be invoked. These WTO rules, in fact, offer the United States more formal legal protection than the GATT 47 rules formal voting did. And in this regard—I will not go into the details of those rules, but I would be happy to answer questions about them—it is useful to note an important curb on decisionmaking adverse to the U.S. interests. It derives from a simple practical reality: the size of the U.S. economy. If the United States is unhappy with the WTO, ultimately it can withdraw from it. Now, this is obviously not a situation the United States would like to face, but neither is it a threat that other countries would like to hear. So, the withdrawal of a powerful trading nation is likely to create a powerful incentive for moderation.

In summary, the development of the World Trade Organization and the dispute settlement understanding, in our view, pose no threat to the United States. No actions by the WTO or through the dispute settlement procedures can restrict U.S. domestic legal powers. These are international developments that build on the GATT

47's substantial foundations and should not stand in the way of U.S.-GATT implementation.

Thank you.

[The prepared statement of Ms. Reade follows:]

PREPARED STATEMENT OF CLAIRE A. READE

Good morning, Mr. Chairman and Members of the Committee. My name is Claire Reade and I am appearing here today at the request of the American Bar Association President George Bushnell. I am Co-chair of the American Bar Association's Section of International Law and Practice, Committee on International Trade. My testimony will focus on the Uruguay Round dispute settlement procedures and the institutional framework created by the World Trade Organization. Let me note here that the ABA has not taken a position on the details of the substantive agreements concluded in the Uruguay Round. Rather, this testimony focuses on the ABA's position that the dispute settlement procedures and the institutional framework of the WTO do not detract from domestic U.S. legal powers and do not otherwise create concerns that should prevent GATT implementation by the United States. A copy of the ABA's report and recommendation on the GATT Uruguay Round Agreements is attached to this testimony for your reference.

Throughout the Uruguay Round negotiations, the American Bar Association has expressed its strong support for more effective GATT dispute resolution procedures. Similarly, the ABA has viewed the WTO as providing a more stable and unified institutional framework for GATT activities.

Enhancing the rule of law in institutional proceedings and disputes involving the world's major trading nations is, in our view as lawyers, beneficial to the United States and to the multilateral trading system. We do not see a threat to U.S. domestic legal powers in the Uruguay Round dispute settlement procedures or in the institutional procedures established by the WTO.

GATT 1994 DISPUTE SETTLEMENT

GATT dispute settlement procedures, as modified by the dispute settlement reforms of the Uruguay Round, make an important contribution to maintaining a stable environment for international trade. Without effective dispute settlement, nations have far less incentive to obey the substantive international rules that the United States and other countries have worked hard to develop and that keep markets open to U.S. products.

A fair dispute settlement system agreed to by the world's trading nations that protects the integrity of the substantive rules negotiated by these countries is also more stable and workable over the long term than ad hoc unilateral actions taken by a country to redress perceived trade grievances. A country's knowledge that its practices will be scrutinized for fairness under agreed rules in an international spotlight undoubtedly curbs protectionist policy making. The formal launch of dispute settlement proceedings also brings errant countries to the table to negotiate solutions. Finally, the ultimate decision by a dispute settlement panel allows finality—the controversy comes to a formal end, and the parties can move on.

Congress has recognized the need to strengthen GATT dispute resolution for some years now, and has pressed for reforms. For example, a Rouse report in 1986 (H. Rep. No. 99-581, 99th Cong., 2d Sess. 123) stated that "[t]he strengthening of mechanisms and procedures for dispute settlement is * * * essential for restoring the credibility of international trade institutions." The Understanding on Rules and Procedures Governing the Settlement of Disputes (the "Understanding") negotiated during the Uruguay Round, achieves these goals without impairing U.S. domestic sovereignty.

A number of specific reforms were achieved through the Understanding:

- The old GATT and ancillary GATT agreements produced confusing and overlapping dispute settlement procedures that sometimes prevented a controversy from reaching any forum for resolution. The Understanding creates one uniform proceeding for all disputes, eliminating the conflicts and wrangling involved in the old regimes.
- Under the old GATT procedures, all submissions to the dispute settlement panels were secret. The Understanding requires all participants to issue public summaries of their positions and permits countries to make their own submissions public in their entirety.
- Under the old GATT, no procedures existed to permit dispute settlement panels the use of technical experts to assist them in their deliberations. The Understanding explicitly authorizes panels to obtain this technical expertise.

• The old GATT contained no appeal mechanism for a party who believed that the panel's decision was flawed. The Understanding provides parties with the right to appeal to an expert body on any legal issues raised by the panel decision. The old GATT rules permitted countries to avoid entering into dispute settlement and allowed the results of dispute settlement to be censored. The Understanding's rules are designed so that countries will enter dispute settlement promptly and in good faith, and the dispute settlement panels' recommendations will be heard and given full consideration.

These reforms answer a number of the concerns raised by the United States about the "credibility" of international dispute settlement. Moreover, a credible international dispute resolution system does not threaten the United States' domestic legal rights and powers. GATT dispute settlement panels only have the power to make recommendations to the parties as to how they should proceed. Dispute settlement panels have no power to change U.S. law. Put in legal terms, their decisions are not "self executing."¹

Deciding whether and how to change U.S. law in light of a dispute panel recommendation is exclusively a U.S. sovereign right. Indeed, the history and structure of the GATT dispute settlement system have always reflected a clear understanding that the role of GATT dispute settlement is to facilitate the resolution of disputes between sovereign countries, not to impose solutions on anyone.

A country whose policy or law is found to be inconsistent with GATT rules will be asked to correct the inconsistency. If it does not do so in a timely fashion, it may provide compensation to the aggrieved country or otherwise settle the grievance. Under the Understanding, in the rare case where a country decides to do nothing to respond to the panel recommendations, the aggrieved country has the right to withdraw trade benefits up to the amount of the injury it has suffered.

The United States frequently finds itself in the position of pressing other countries to change protectionist policies, and continued access to the U.S. market is a powerful incentive for others to reform. If, however, the U.S. ever finds itself in the position of respondent, and a U.S. measure is found to be GATT-inconsistent, decisions on whether and how to respond are for the U.S. alone to make. Clearly, the existence of a dispute panel recommendation pointing out a problem in U.S. law or policy will be carefully weighed by U.S. decision-makers. On the most pragmatic level, the United States has relied on GATT dispute settlement to solve important U.S. trade problems, and the U.S. will not want to undermine the integrity of the system.

In the unusual case where the U.S. decides it disagrees with a dispute settlement panel recommendation, and it therefore cannot settle or bring its policy or law into conformance with the recommendation, that U.S. measure will remain in full force and effect. In such a circumstance, the WTO has no power to impose the panel's views on the United States. Rather, the U.S. would face the possibility of the same type of diplomatic action by its trading partner that has been a traditional mode of resolving trade disputes. When another country believes the United States has not lived up to its part of a bargain, withdrawal of trade benefits has always been an option. The Understanding authorizes this self-help by the aggrieved nation more effectively than the old GATT did, when a panel finds that a country does not meet some aspect of its GATT contract.

However, the Understanding also limits the compensatory action that can be taken to a greater degree than the old GATT rules did. The Understanding provides that only the injured party can withdraw trade concessions, and stipulates that the withdrawal must be limited to the actual damage incurred.

In short, GATT dispute settlement, and the reforms offered by the Uruguay Round Understanding do not usurp the exclusive role of the U.S. Congress and the U.S. Executive Branch in formulating U.S. policy and enacting U.S. laws. Instead, they offer the United States and its trading partners a means to try to ensure that barriers to trade are not erected, or if they are, that their removal is facilitated to the maximum extent possible, given the sensitivities of national sovereigns.

THE WORLD TRADE ORGANIZATION: A FRAMEWORK FOR BETTER MANAGEMENT OF GATT ACTIVITIES

Creation of the World Trade Organization ("WTO") was an important, but incremental change for the GATT system. The existence of the WTO means that the variety of GATT issues can be addressed in a more coordinated manner. It does not cre-

¹In this respect, the dispute settlement proceedings under the GATT differ from those under the US-Canada Free Trade Agreement and the NAFTA, where the panel process does result in decisions implemented directly by the countries in domestic law.

ate a new international power center or diminish the rights of the United States or the other sovereign nations who have participated constructively together in GATT activities since 1947.

Rather, the WTO was designed largely to solve a number of practical problems faced by the old GATT. First, it corrects a technical problem with the old GATT. The old GATT organization did not have international legal status, and this adversely affected its institutional legal rights in a number of countries around the world. Lack of international legal status also made coordination with other international bodies awkward. The WTO has formal legal status, so WTO personnel and activities will not suffer from the frustrating inefficiencies created for its GATT predecessors. This legal change does not, however, give the WTO any supranational authority to impose institutional views on its members. The WTO is a carefully limited institution.

The WTO also will permit much better coordination of the various substantive GATT agreements.² By joining the WTO, countries will agree to be bound by all the basic GATT agreements, permitting more comprehensive coordination and activity. This approach also eliminates the problems created under the old GATT, where countries could avoid whatever international disciplines they found distasteful by simply not signing onto a particular GATT agreement.

The WTO also improves upon the GATT by spelling out the customary rules of proceeding so that they are explicitly authorized. These customary rules rely on the development of consensus before any action is taken. In addition, in case the customary consensus approach might fail (which it has not in the past thirty five years) the WTO spells out careful formal voting rules that provide more protection to the United States than the old GATT rules did.

A number of critics of the WTO have raised questions about these formal voting procedures. They argue that the "one country/one vote" rule will permit the United States to be overruled on key issues. Likewise, they claim that these WTO procedures will allow other countries to vote themselves waivers from GATT obligations.

These arguments are not well-founded. First, as noted above, the WTO will continue to rely on consensus to reach decisions, and there is no reason to believe that this decades-old practice will break down. Second, a number of important protections have been incorporated into the formal WTO voting rules in the unlikely event that they have to be invoked. For example, certain key principles cannot be amended without complete consensus. Further, no substantive amendment can be applied to a country without a special super-majority vote of three-quarters of the GATT members. (GATT experts indicate that this is such a high threshold that it could prove impossible, in practice, to achieve it.) If a country objects to the change, it can withdraw from the WTO.

In this regard, it is useful to note an important curb on decisionmaking adverse to United States interests that derives from a simple practical reality: the size of the United States economy. If the United States is unhappy with the WTO, it can withdraw from it. The withdrawal of such a powerful trading nation would likely cause the entire WTO to collapse, creating a powerful incentive for moderation.

In summary, the development of the World Trade Organization poses no threat to the United States. No actions by the WTO can restrict U.S. domestic legal powers; its existence offers a carefully limited organizational framework for the increasingly complex and varied international trade regimes that the United States participate in and often has helped to pioneer.

AMERICAN BAR ASSOCIATION SECTION OF INTERNATIONAL LAW AND PRACTICE RECOMMENDATION

Be It Resolved, That the American Bar Association urges the Congress and the United States to approve and implement the agreements resulting from the Uruguay Round of multilateral trade negotiations.

Be It Further Resolved, That the American Bar Association endorses the Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes, which develops a unitary dispute resolution procedure, reforming the procedure for approval of dispute panel reports, increasing transparency, and creates a procedure for appeal of GATT panel reports.

Be It Further Resolved, That the American Bar Association supports the Agreement Establishing the World Trade Organization.

²It is important to note here that the WTO itself contains no substantive obligations. The various GATT agreements are the documents that impose substantive international disciplines.

Overview

Through this Recommendation, the American Bar Association ("ABA") would express its support for the agreements recently concluded in the Uruguay Round of multilateral trade negotiations, including reforms that are essential to strengthen the existing multilateral dispute resolution procedures and to create a world trade organization.

The Uruguay Round agreements are critically important to global prosperity, a point made by Western finance and trade ministers and heads of state with increasing frequency and urgency over the last few years. The ABA has repeatedly endorsed the United States' participation in the multilateral trade talks, viewing these talks as essential to continued U.S. economic growth. At the August, 1993 annual meeting, the ABA adopted resolutions that supported the strengthening of multilateral dispute resolution procedures and the establishment of a multilateral trade organization.

The proposed resolutions support the overall agreements reached in the Uruguay Round, and in particular endorse the agreements on dispute resolution procedures and a World Trade Organization ("WTO"). This focus on dispute resolution and institutional measures is particularly appropriate for the American Bar Association, since lawyers have special expertise in these areas. If the proposed resolutions are adopted, they may make a significant contribution to the constructive development of United States international trade policy.

The dispute settlement reforms of the Uruguay Round are of fundamental importance to achieving a strong and stable multilateral trading system. Without effective dispute settlement procedures, international economic conflicts will fester and nations will pay little mind to the substantive trade rules. The agreed reforms would greatly improve the effectiveness of the existing dispute settlement procedures under the General Agreement on Tariffs and Trade ("GATT"), by eliminating a country's ability to block adoption of dispute panel reports and creating a due process system of appeal in its place. In this way, the rule of law would be advanced over political expediency. In addition, the reforms would improve multilateral dispute resolution by creating a unified dispute resolution procedure in place of the current plethora of separate procedures.

Similarly, a strong institutional framework for multilateral trade is central to the successful implementation of the existing substantive rules and those agreed to in the Uruguay Round. Yet this necessary institutional framework does not now exist. The current GATT was never intended to be an organization and was never given an adequate institutional structure to facilitate the development and orderly implementation of multilateral trade rules. The establishment of the WTO will provide a sound institutional foundation for international trade, permit greater adaptability to a dynamic and increasingly complex international commercial context, and encourage countries to accept all the obligations of the world trading system and build upon them with new negotiated obligations as required by developments in world trade.

While the American Bar Association supports the overall Uruguay Round agreements and recommends approval by the Congress under the applicable "fast track" procedure, this report does not address or express any Association views on the numerous individual issues relating to substantive provisions of the Uruguay Round agreements or on the need for further negotiations on specific substantive issues.

Importance of a Rule-Oriented Liberal World Trading System

There is broad consensus that a liberal international trading system is essential to promote global prosperity. Expanding trade stimulates growth by opening new markets for exporters and by freeing resources and stimulating productivity in importing countries. Low trade barriers also encourage needed capital and technology flows through investments abroad. For instance, an entrepreneur who is considering investing in a small developing country may find that the investment is only feasible if the goods produced can be exported. A liberal trading system with clear and enforceable rules assures investors of access to third country markets. To foster these goals, the United States has led international efforts over the last 50 years to build a strong and stable world trading system.

Liberal trade rules also have a direct and beneficial impact for United States consumers. By lowering trade barriers and establishing common rules of trade, liberal trade rules foster cross-border competition and result in lower prices and increased selection at the retail level. A liberal trading system permits United States industries that enjoy comparative advantages in the global marketplace to expand output, leading to increased employment opportunities for United States citizens.

The ABA has repeatedly endorsed the United States' support of a liberal world trading system that includes effective multilateral rules and institutions. In 1986, the ABA endorsed the ongoing Uruguay Round of multilateral talks as necessary "to preserve and to strengthen the current multilateral trading system and to liberalize trade further on a mutually fair and reciprocal basis."¹ In August 1993, the ABA urged "the conclusion without undue delay of the Uruguay Round," and emphasized the need for "the strengthening of existing GATT multilateral dispute resolution procedures" as well as "the establishment of an effective multilateral trade organization."²

Despite the importance of a rule-oriented and liberal trading system, recent years have seen increasing use of trade restrictions throughout the world, together with greater reliance on unilateral trade remedies to redress perceived violations. The delayed conclusion of the Uruguay Round has aggravated these trends, as nations have refused to comply with GATT rulings pending completion of the talks. The Uruguay Round agreements will play an essential part in resolving these problems. In particular, the strengthened multilateral rules and institutions agreed to in the Uruguay Round will build confidence in the trading system and will encourage compliance with internationally-agreed measures. Without an adequate system to monitor and enforce the substantive rules of the trade system, the effectiveness of these rules will be substantially diminished.

Historical Background of GATT Institutional Issues

The GATT has its origins in the post-World War II consensus that stronger international economic institutions were needed to prevent a recurrence of the protectionist measures and ensuing retaliation that were considered to be a major cause of the depression and the war. To this end, the United States led international negotiations in 1946-48 to prepare the charter for an International Trade Organization (ITO), and to negotiate an initial agreement to reduce tariffs, and to draft substantive clauses relating to the tariff obligations. The latter two elements would constitute the GATT.

The ITO, rather than the GATT, was intended to be the institution that would "oversee" world trade and resolve disputes. The GATT was never given an adequate organizational structure and its dispute resolution procedures were rudimentary. However, the proposed ITO was never created, due to the failure of the United States to ratify it. Because the ITO never came into being, the GATT became the de facto institution for managing world trade issues and resolving international disputes. While the GATT has had notable success, due to the creative institutional improvisation of its leaders, the institutional weakness in this ad hoc system has hampered the management of world trade and the effective resolution of international disputes. These problems have spurred repeated Congressional criticism of the current multilateral trade framework and statements emphasizing the need for improvement.³

The 1979 Tokyo Round agreements were an important accomplishment, but they have demonstrated some of the GATT's institutional difficulties. The Tokyo Round produced nine separate agreements, several of which provided for institutions to manage international trade, distinct from the GATT itself (e.g. the creation of an International Dairy Products Council, an International Meat Council, etc.). In addition, the agreements frequently dealt with issues that are also dealt with in the GATT (e.g. subsidies), resulting in duplication and contradictions. Many of the Tokyo Round agreements have separate dispute resolution procedures (e.g. the Subsidies Code, the Antidumping Code, the Government Procurement Code, etc.). The fragmentation of dispute settlement led to several problems, such as overlapping jurisdiction over particular disputes, the potential for conflicting rulings, unnecessary complexity, and added costs.

In addition, the Tokyo Round agreements considerably expanded the range of substantive issues subject to multilateral regulation (e.g. non-tariff barriers and government procurement). This expansion has added significantly to the administrative and institutional burden on the GATT. The Uruguay Round also adds a number of important new substantive multilateral rules (e.g. extending rules to international trade in services and the rules on trade-related investment measures ("TRIMs") and trade-related intellectual property rights ("TRIPs")). This trend could continue after the Uruguay Round into areas such as the trade impact of environmental measures

¹ 1986 Annual Meeting, Recommendation 113A.

² 1993 Annual Meeting, Recommendation 105C.

³ See H. Rep. No. 99-581, 99th Cong., 2d Sess. 123 (1986) (stating that "[t]he strengthening of mechanisms and procedures for dispute settlement is * * * essential for restoring the credibility of international trade institutions").

and the role of competition policy. The expansion of GATT rules will increase the burden on GATT institutions and dispute settlement procedures, thereby underscoring the need for substantial improvement in these areas.

In the Uruguay Round, GATT members recognized the importance of addressing these fundamental institutional questions that affect the successful operation of the GATT and its substantive rules. The 1986 Punta del Este declaration, which marked the beginning of the Uruguay Round, specifically refers to these issues. To this end, the Uruguay Round discussions focused on two general areas: (1) the improvement of the GATT dispute resolution procedures; and (2) the creation of a stronger institutional framework for the multilateral trading system.

The results of the Uruguay Round discussions in these areas are principally reflected in two linked agreements: the Understanding On Rules and Procedures Governing The Settlement of Disputes (the "Understanding") and the Agreement Establishing the World Trade Organization (the "WTO Agreement"). The next sections discuss the particular problems addressed by these agreements, and express support for the solutions reached in the Uruguay Round accord.

Need to Strengthen Dispute Resolution Procedures

Since the 1950s, the GATT practice has been to refer a dispute to a specially appointed panel of experts. The panel examines the dispute and submits a report to the GATT Council. A panel report itself has no legal force, but is the considered opinion of a panel of expert members. To be effective, the panel report must be adopted by the GATT Council. If the GATT Council adopts the panel report, it may request the offending country to remove its measures, or may authorize the complaining country to withdraw trade concessions made to the offending country.

At the start of the Uruguay Round, governments generally agreed that the core problem with the GATT dispute settlement procedures is the need for consensus. Under current practice, a panel report will not be adopted over the objection of any party including the offending country. If a GATT dispute settlement panel rules against a country, that country is able to block adoption of that ruling by the GATT Council.

In a significant number of recent cases, GATT members have used the consensus requirement to block the dispute settlement procedures. Although the United States has itself blocked some GATT panel reports for a limited period of time, it has been troubled by blockages by other countries, particularly the European Community's blocking of panel reports on subsidy issues regarding agricultural products. Such actions are particularly common in actions brought under the Subsidies Code dispute settlement procedures (which are very similar to the general GATT procedures): since 1983, one or more signatories have blocked the adoption of all panel reports under the Subsidies Code.

The Understanding would improve the GATT dispute settlement procedures by eliminating a country's ability unilaterally to block GATT action, and creating an appeal procedure instead. A standing seven-member appellate body would be established to hear appeals of panel cases, with its members to be persons of recognized authority and expertise in law, international trade, and the GATT. Appeals would be limited to issues of law raised by the panel report and legal interpretations developed by the panel. The proposed ABA Recommendation supports this appellate procedure.

In addition, the Understanding would create a unified dispute resolution procedure to address the problem of multiple procedures resulting from the Tokyo Round agreements (discussed above). By creating a unified dispute resolution procedure, the Understanding would resolve the current difficulties arising from overlapping jurisdiction and avoid the potential for conflicting rulings.

Furthermore, the Understanding represents a significant step towards greater transparency in GATT dispute resolution procedures, an objective endorsed by the ABA at its August, 1993 annual meeting. The Understanding addresses this problem by requiring that parties to a dispute provide non-confidential summaries of their panel submissions that can be provided to the public, and recognizing a party's right to disclose its submissions and positions to the public at any time.

In addition, the reforms provide better opportunity for the utilization of scientific expertise, a measure also endorsed by the ABA in August, 1993. The Understanding expressly authorizes panels to form expert review groups to provide advice on scientific or other technical issues of fact.

Need for a World Trade Organization

As discussed above, the de facto development of the GATT has not created a basic institution capable of facilitating the smooth functioning of the world trading system. The growing importance and complexity of global trade relations make it im-

perative to create an appropriate institutional framework to administer the substantive rules governing these relations. While the institutional weakness of the trading system may have been adequate to address the simpler and less interdependent relations following World War II, the current structure makes it more difficult to cope with the explosion in the number of participants in international trade and in the rules governing this trade. Without rapid and significant improvements in the current structure, the current tendency towards unilateral actions and bilateral trading blocs is likely to accelerate, worsening the fragmentation of the global trading system and increasing the likelihood of economically-motivated conflict. A multilateral trade organization can play an essential role in moderating the difficulties and tensions that accompany the expansion of the world trading system.

In addition to the GATT's general institutional weakness, there are particular problems with its operation. For instance, the GATT lacks a definitive legal basis as an international organization, which affects its status in the domestic law of a number of member countries, including the United States, and its relationship to the other international economic institutions. In addition, the numerous side-agreements often overlap with the GATT itself, and encourage countries to opt out of obligations that are not exactly to their liking rather than accepting the obligations in order to receive the broader benefits of GATT membership.

The proposed resolution endorses the WTO Agreement, which will establish a new, limited institutional structure for world trade. The WTO, unlike the GATT, will have a definitive legal basis, permitting a clear status under international law, enhancing its ability to interact with other international economic institutions, and enabling the WTO to administer the unified dispute resolution mechanism discussed above. The WTO Agreement will also serve as the basis for a "single undertaking," i.e. the mechanism through which nations would accept the results of the Uruguay Round. As such, this agreement would discourage countries from adopting a piecemeal approach to the results of the Uruguay Round. Thus, the WTO Agreement is an essential part of effective implementation of the results of the Uruguay Round, and for the extension of the rule-oriented approach to the new issues of that round, such as services and intellectual property.

The proposed World Trade Organization is carefully limited to the necessary procedural reforms, and should therefore not be considered to establish a new "International Trade Organization." Unlike the ITO Charter, the new WTO Agreement does not contain substantive obligations. The substantive obligations continue to be expressed in the updated GATT, and in the other agreements and documents resulting from the Uruguay Round, which are appended to the WTO Agreement. Thus, the procedural nature of the reforms of the multilateral trade framework would not allow the imposition of additional substantive obligations on member states, unless there were subsequent treaty agreements or amendments.

There has been some concern that GATT dispute resolution panels, or a world trade organization, could impose binding obligations on United States domestic law and thereby overrule substantive U.S. law in areas such as environmental regulation. However, the United States constitutional law and practice would not apply the results of a dispute settlement procedure directly in United States domestic law (i.e. the results would not be "self-executing"). It generally requires an act of Congress to implement the necessary changes to conform with the international ruling, and Congress (or in some cases the Executive) therefore has adequate opportunity to consider the issues involved. By this resolution, the ABA would urge the Congress to adopt legislation implementing the Uruguay Round agreements, which could address some of these questions.

Conclusion

By means of the proposed resolutions, the American Bar Association would support the overall agreement reached in the current round of multilateral trade negotiations, underscore the importance of improved procedures for settling multilateral trade disputes, and endorse the establishment of a World Trade Organization that would foster better implementation of the substantive rules governing international trade. In so doing, the American Bar Association would express its support for continuing and maintaining a system of rules that has fostered economic growth and prosperity over the last four decades.

The CHAIRMAN. Thank you very much. Mr. Nader.

**STATEMENT OF RALPH NADER, CONSUMER ADVOCATE,
PUBLIC CITIZEN**

Mr. NADER. Thank you, Mr. Chairman. I am here today to recommend that the Senate reject the Uruguay Round of the GATT treaty and send it back to Geneva, Switzerland, with instructions to the executive branch to renegotiate it in the interests of democratic procedures and the interests of all nations' interests in democratic procedures and in the interests of the United States. I want to submit, of course, my testimony in its completion with all its footnotes and the annexes that support the points I am making today. But I want to emphasize that the only profession that clearly will economically benefit from this trade agreement will be the legal profession. The fastest growing work in law today is trade practice, and lawyers will never be viewed as a nontariff trade barrier under this international agreement. This reflects my astonishment at the American Bar Association's position, about which more later, but we must remember, the American Bar Association is like a submarine. It issues recommendations arising out of special compartments, as a submarine is organized, and certainly reflects the commercial international law practice most predominantly of those members.

It is important to note here, and unfortunately not widely noted in the past months, that all national environmental groups, all trade unions, all consumer groups except one, and many grassroot groups representing church groups, farm groups, animal rights groups, and others, are against the Uruguay Round, period. They are not for part of it or against part of it, they are against it. These groups have millions of members all over the country who work every day, who shop every day, and who aspire to control the institutions of government which will affect their livelihood and their freedom. The Uruguay Round, negotiated in secret, and about to be offered to the Congress under an autocratic fast track procedure, is not just an economic document, it is a political and legal document, and as such it deserves to be measured by one overriding priority: Does the Uruguay Round, involving membership of over 123 nations, damage our democracy, damage our system of due process? The answer is overwhelmingly "Yes," and what you have heard earlier today is a process of criticism wherein the guts of this Uruguay Round, shaped largely by multinational corporations for a global corporate world order, are spilling out for the public to begin to sense and evaluate. Let me illustrate how contrary to the way we do things in this country are the procedures of the World Trade Organization and its Uruguay Round.

No. 1, it rests on a one-nation/one-vote/no-veto process, and as Professor Tribe pointed out, it is even worse than that in terms of what one nation can do regarding the tribunal decision's sanctions. We have never entered into a major international economic agreement without weighted voting or a veto. In the U.N., we have a veto in the Security Council; at the IMF and World Bank we have weighted voting. We are going to be asked, under this agreement, to have less than 1 percent of the vote, and undoubtedly will have to finance about 20 percent of the World Trade Organization's budget.

The World Trade Organization is a system of international governance, with legislative, executive, and judicial powers. There has never been anything like this before. It is a powerful institution, and one that through its initiatory powers can be an expandable institution in terms of its authorities. It is profoundly antidemocratic. Its signal mandate is the supremacy of trade over all other living standards, over all other noncommercial ways of life. As it has been called, it is "trade über alles." We do not operate this way in the United States. When a commercial promotion law is passed by Congress, when an OSHA law is passed by Congress, when a Food and Drug Safety law is passed by Congress, there are level playing fields. Neither have to get on their knees, as under this World Trade Organization, where it is not commerce that has to get on its knees to prove that it is least consumer damaging or worker damaging or environmental damaging, it is our environmental, worker condition, and consumer laws which have to get on their knees to prove they are not trade restrictive before the secret tribunals in Geneva. And I might add, many other law—the Nuclear Nonproliferation Act of 1988 has been cited by the European Community's report earlier this year as being trade restrictive in its requirement that foreign buyers of U.S. exports of nuclear materials have to pledge or sign a statement as to how they are to use this material.

You heard information before about procurement, which is a murky area, the buy America, buy California; you heard about the unitary tax situation, et cetera. Now, it is not just trade supremacy over other living standards, it is the way this supremacy is exercised. It is not only an advanced auto safety standard that may be challenged by another foreign country, where the United States is taken to Geneva before these tribunals, they may say, well, your safety standard is OK in terms of its objective, but the means by which it is to be promoted is too trade restrictive. And so there has been discussion in the European Community that the Food Labeling Act in our country, which the Congress passed, may be OK in terms of its objective, but rather than labeling the food products it is better to post grocery signs in our supermarkets to alert the consumers.

This focus on the means to health and safety goals is extremely mischievous, but made more so by the harmonization mandates and the equivalency determinations—very fancy language—in the World Trade Organization agreement. The goal of the World Trade Organization is to harmonize all world standards to one standard. That penalizes the advanced countries, that penalizes the more sensitive countries, that penalizes the more pioneering countries, that penalizes the United States of America, Mr. Chairman.

We are now witnessing a secret harmonization negotiation in Acapulco between the United States and Mexico on permissible truck weights. In the United States, no truck can be on our highways which carries more than 80,000 pounds. In Mexico, the Mexican Government allows trucks to carry 175,000 pounds. The trucking industry in the United States does not like the 80,000-pound limit. It is down there with its representatives working with the Mexican Government and the Mexican trucking industry to harmonize truck weight standards in more unsafe directions, consider-

ing brake capability and highway durability in our country. This is why the harmonization process is almost invariably going to be harmonization downward, pulling down our health and safety standards to lower common denominators abroad. We have already seen the mischief that occurs from equivalency determinations under the Canadian-U.S. trade agreement on meat inspection, which has led to a reduction in meat inspection between the two countries' products and severe problems voiced by a very valiant USDA meat inspector under oath before a House committee a year or more ago of contaminated meat coming into the United States from Canada. These are some of the concrete illustrations of what this trade supremacy over health, safety, workplace conditions, consumer, and environmental matters entail.

Now to the tribunals: The tribunals do not operate the way we operate in our court. This is a secret judiciary which the U.S. Congress is being asked to endorse. These tribunals are staffed by three trade specialists who can pursue, if they wish, private simultaneous business careers without conflict-of-interest standards. This is a tribunal whose three trade specialists preside over a totally secret deliberative process. The press is excluded. I am very interested to see how the New York Times and Washington Post are very upset about the Federal judges who just ruled that Federal cameras should be taken from Federal courtrooms starting after December. I have yet to hear one whimper from those knee-jerk, unthinking, free trade editorial writers in the New York Times and Washington Post about the totally closed, secret nature of tribunals where decisions will be made that will affect the economics, health, and safety of the American people.

The press is excluded, nongovernmental organizations are excluded, all citizens are excluded, State attorneys general are excluded, only representatives of the national governments, parties to a dispute, are there. Furthermore, all submissions, all briefs, all briefs and materials which are required to be open in our courts, can be held secret. Countries, at their will, can disclose them, not likely. Indeed, the burden of persuasion is on the defendant country. That is not the way we do things in this country. We see depositions, we see briefs, we see the evidence, we see the cross-examination. Kangaroo, secret tribunals have no role in a trade treaty which the United States is being asked to endorse and thereby give the status of Federal law to.

Yesterday, Public Citizen filed two lawsuits, one, under the Freedom of Information Act, against the U.S. Trade Representative Mickey Kantor demanding that submissions of foreign nations before these GATT panels be disclosed by the U.S. Government; and second, that the trade advisory committees to the U.S. Trade Representative's Office, overwhelmingly composed of nonlabor, nonconsumer, nonenvironmental participants, mostly big business representatives, that these advisory panels be open to the public. Mr. Kantor has repeatedly assured us that this would be done, but he has not done it, similar to many of his other assurances.

Third, we should emphasize the following: 51 leading journalists and heads of media organizations sent a letter a few weeks ago to President Clinton. This includes the head of the American Society of Newspaper Editors, the head of the Nieman Foundation, and

many other prominent media figures. They protested the World Trade Organization agreement and the Uruguay Round because of its profound secrecy, its profound inaccessibility to citizens and press to its deliberations, and its profound anti-first amendment spirit. Nobody covered this letter, Mr. Chairman, except one paragraph in an AP report and a Wall Street Journal report. The media is so blind on this issue, either so lazy or so naive or so ideologically prejudging that it will not even cover an outstanding and unprecedented public position by its own prominent colleagues on the secrecy involved here. And secrecy is the cancer of democracy, just like information is the currency of democracy.

Earlier this year, the European Community, Canada, and Japan issued detailed reports attacking specific U.S. Federal and State laws, many of them health and safety laws but not all, some of them economic policy laws, as being trade restrictive and as being ripe for challenge under the World Trade Organization agreement. The press did not cover these reports. A few weeks ago Prof. Robert Stumberg issued a report, a professor at Georgetown Law School, on how the World Trade Organization agreement and Uruguay Round would put at risk over 60 California laws, State laws, and did so in some detail. No coverage by the media. At the same time that he was holding a press conference, suddenly Mickey Kantor announced a press conference for only California reporters at his office, at the direct same time that Mr. Stumberg had his press conference. This is a technique that is not very noble that the U.S. Trade Representative is beginning to use in other contexts, as well.

The World Trade Organization agreement is supremacy of trade over other matters, makes Senator Harkin's proposed ban on child labor from abroad where there is expanding and brutalized child labor in factories, many of them in the Third World for a few cents an hour producing carpets, baby clothes, and other products for export to the United States, that proposed ban by Senator Harkin is unlawful under the proposed World Trade Organization agreement. It violates the ban on unilateralism and violates the ban on taking equal or like products and differentiating them on the basis of how they are manufactured. So, too, will be ruptured the connection between conditioning trade relations with dictatorial countries by the United States on the basis of human rights improvement. As soon as China joins the World Trade Organization agreement, no more conditioning of human rights improvements based on the U.S. trade relations with that country. That is considered unlawful unilateralism under WTO.

Now, Ambassador Kantor has made so many statements which are misleading to the Congress that he ought to be hauled up before the Federal Trade Commission on being a generic deceptive practice. Listen to some of the Kantorisms. No. 1: No, Ralph, you are mistaken, 301 is strengthened under the WTO Uruguay Round. Funny, he is about the only person who says that. The Congressional Research Service says that in the areas covered by the WTO, 301 cannot be exercised, nor can super 301.

No. 2: He says our sovereignty is enhanced under the WTO. This is rather strange, for three reasons. And let me make it very personal to the Congress. No. 1, you will be required to either obey or pay under an adverse Geneva secret tribunal decision by an or-

ganization that you have very little control over other than moving to withdraw from it. For instance, there is nothing in the Uruguay Round, Mr. Chairman, which requires the executive branch to get the approval of the U.S. Congress before voting to change or adopt international trade rules. No. 1, Congress' authority is eroded under that position, right there.

No. 2, and quite important, is that, up until now, if foreign companies want to challenge State laws they have got to go into State courts. They went to State and Federal court on unitary tax. And the State attorney general and other officials could object and go to court and defend the State. Now the companies can rent a government overseas and take the U.S.A. to Geneva charging that a State law violates the World Trade Organization, and neither the State attorney general nor the Governor nor any other State official in South Carolina, Nebraska, or North Dakota, or any other State, can go to Geneva and defend the State. I would think that is an erosion, as well.

And there are other erosions of congressional prerogatives that need to be discussed. Every time you come up with a proposal—and ask Congressman Dingell—when he issued under the telecommunications law, when he reported out of his committee he had a 60-percent domestic content requirement. Immediately, Mr. Kantor wrote him a letter and said it is WTO illegal. This is what you are going to be facing. You are going to be spending a lot of time with the State Department, you are going to be spending a lot of time with the U.S. Trade Representative, because unlike anything else you are going to constantly be chilled with your proposals. If you want to do something for farmers, you want to do something for consumers, you do not only have to worry about your State capital and Washington and State and Federal law, you have to worry about a beyond-the-reach international autocratic bureaucracy called the World Trade Organization. And so do the American people. When they want to improve this country with their citizen initiatives, whether it is recycling, whether it is a fairer tax of various companies, whether it is improving worker conditions or consumer issues or environmental issues, they are going to be told by the State Department repeatedly, forget it, your proposal or your proposed legislation is WTO illegal. And the American people will not be able to say that they can reach Geneva, because they are shut out at Geneva. A third layer of bureaucracy that is outside our democratic due process and information laws is quite incompatible with what I see as the mission of Congress.

Now, how will this occur in real practice? This is where the ABA lawyers can tell you a lot, if they wished. Down on K Street there are a lot of corporate law firms, and just like the corporate law firms and the investment bankers stimulated these mergers and acquisitions in this country in the last 15 years, many of them were empire-building, nonjob-producing, wealth-destroying institutions, except for the executives and their golden parachutes, these law firms and other trade associations will have a driven dynamic vested interest in making sure that when their companies cannot repeal or weaken a law in this country because our democracy is too strong to stand for it, they can endrun our country by going abroad, connecting with their foreign subsidiaries, getting a foreign

government to take the United States to Geneva for these tribunal decisions, or to establish the harmonization committee which they will always have access to, unlike other citizens, in order to harmonize our standards downward. It is this domestic foreign corporate access that is going to chill and going to put the real meat and potatoes in this World Trade Organization agreement.

Let me note very briefly, Mr. Chairman, that the position of the U.S. Trade Representative, who I have said in his presence when I met him that he will go down in history as doing more damage to the Democratic Party than probably any official in the Clinton administration, that the U.S. Trade Representative constantly says that this is not going to affect State law. And he has this little boilerplate statement that says the WTO cannot change, alter, or repeal any U.S. laws, Federal or State. And then he stops. He stops. And he does not add that under the World Trade Organization agreement we are required to either obey or pay perpetual trade sanctions until we conform our laws, we are required to move to harmonization of standards under procedures yet to be defined by the World Trade Organization but likely to be also autocratic, such is its true nature, and that we are required under the World Trade Organization agreement to conform all our laws, regulations, and standards with the rules of the World Trade Organization, not that we should seek in good faith. That was the original provision in the Dunkel draft. It was changed just before December to say shall conform.

And I might add that by putting a December 15 artificial completion date on these agreements the United States lost bargaining power and the other countries knew it, and we got rolled in Geneva. Indeed, when I asked Ambassador Kantor why, since he does agree that the due process is far less than we desired, that there is too much secrecy in these tribunals, why did he agree? And he said we could not have gotten an agreement without it, which proves my point that because he was clearly outvoted in his tallying of those 123 nations, he caved, just like he will cave in other instances should this World Trade Organization be approved.

He also paints the United States as a plaintiff like a crusading battler against other countries' restrictive trade laws. But then when we say, well, the United States can be a defendant and other countries can use these same tools against what they think our too humane laws are, too advanced laws, he says no country is going to take on the biggest country in the world. Really? Canada has. Japan cannot wait to move to invalidate 301 under the World Trade Organization agreement. They have stated it publicly. And how long are we going to be the largest kid on the block when the European Community moves as a unit and they are as large if not larger? Time and time again he states that this agreement is great to be used as a sword by the United States, but the other countries cannot use it as a sword against the United States. And if you look at the data, Mr. Chairman, since 1980, we have been more frequently a defendant under current GATT than we have been a plaintiff under current GATT. And because our health, safety, and workplace standards are higher than most countries, we will be exposed to more and more challenges as nontariff trade barrier provisions are triggered by other countries in collaboration with multi-

national corporations. And one reason is not only that we are more humane in these standards, unfortunately, than other governments, many of them who do not protect their people the way we do, but because these tribunal decisions cannot be effectively vetoed under the World Trade Organization the way under current GATT they can be.

I wanted to also point out that although the attorneys general settled with Mr. Kantor, they did not get all they wanted, and I have talked to a number of them. They are very concerned about State sovereignty. The county officials in the United States are quite concerned about unresolved issues here as to how the U.S. Government is going to protect their laws, and even the State tax commissioners, while they negotiated an agreement, basically said they got what they could get given their bargaining power but there is much left to be desired.

I want to confirm your point, Mr. Chairman, that this agreement is full of freebies, of special benefits for special interest that have no legal business being under a proposal that is on fast track. Fast track is not designed to help certain newspapers or to help certain airline companies. This is an impermissible contamination of the proposed world trade agreement. And second, there has been very little attention in our country to the protectionist provisions in this agreement, including the intellectual property provision. But we should take note that when a million Indian farmers protest twice in India with no press coverage in this country—that is a rather sizable rally—when a million Indian farmers protest against the requirement in the World Trade Organization that there can be patents on seed and that they will be required to pay royalties on the seeds after centuries of being able to give each other seeds and to use seeds without having them licensed by the Cargill Corp., that is a very key illustration of a wildly extended patent term that is monopolistic and protectionist. Indian economists in New Delhi and other cities have estimated that the medicines that the Indian people will be purchasing will go up an average of 400 percent under the patent provisions negotiated by the pharmaceutical industry.

So, we should not only be concerned, Mr. Chairman, about the effect on the American people of this trade agreement. This is a pull-down trade agreement. Countries who harshly treat their workers, consumers, and environment, do not violate the nontariff trade barriers. Only countries who protect their people perhaps more than other countries, such as the United States, will be accused of violating these nontariff trade agreements. And a pull-down world treaty on trade and investment that subordinates nontrade, health, and safety issues is not in the interests of the United States, nor is it in the interests of the struggling people abroad.

We can renegotiate a pull-up trade agreement, one that pulls up countries who want to brutalize child labor and brutalize their workers and brutalize workers who try to form trade unions. Instead, Mr. Clinton and Mr. Kantor have opted, with bipartisan support I might add, for moving this Congress for a pull-down global trade agreement, and I think the Senate has a historic role to say no to this, to show the stamina of our democracy, and in the coming debate in early December to make it explicitly clear that this

fast move under fast track with minimal public debate and awareness—and the American people listening to this hearing can ask themselves whether they heard before all the things that have been talked about today and what they want to do about it as citizens—that this fast move, endrun, fast track proposal needs to be rejected and sent back to Geneva with explicit recommendations by the U.S. Congress. There was 20 hours of debate in this agreement, and the House Ways and Means Committee reduced it to 3 hours a few weeks ago. That just illustrates the push that is behind this before the American people find out about it.

The proposed GATT-WTO regime, Mr. Chairman, tests the stamina for democracy and made the U.S. Senate rise to this historic occasion and affirm democracy over international autocracy, and teaches the American Bar Association an important civics lesson.

Thank you.

[The prepared statement of Mr. Nader follows:]

PREPARED STATEMENT OF RALPH NADER

Mr. Chairman and members of the Senate Commerce Committee, thank you for the opportunity to testify on whether the Agreement Establishing the World Trade Organization should be submitted to the Senate for treaty ratification.

MANY IN CONGRESS SUSPEND HEALTHY SKEPTICISM WHERE SO-CALLED FREE TRADE IS CONCERNED

There is something about foreign trade agreements, such as the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), that removes them from broad public discourse and examination. This phenomenon is pronounced when the business/government axis that drafts these agreements in exclusionary surroundings connects the thought-stopping label "free trade" with a Congressional fast-track, no-amendment procedure which makes inquiry into details futile.

People in positions of influence, who should know better, suspend their usual dedication to seeing such trade proposals as propositions to be evaluated, and instead, view them as articles of faith to be intoned.

The proposed GATT agreement, soon to be voted on by a largely uninformed Congress, establishes an international system of governance known as the World Trade Organization (WTO). With an electorate of 117 nations of greatly varying sizes—each with an equal vote and none with veto power—the WTO has expandable legislative, executive and judicial authority over both trade and non-trade laws and practices. More than a multilateral economic framework like the old GATT, the WTO is a major international political regime.

Among the broad powers of this international regime would be judicial powers with sweeping and disturbing implications for local, state and federal law in this country. Under the WTO, foreign governments would be able to challenge federal, state and local laws—either their objectives or the means chosen to meet those legislative goals—that protect America's consumers, workers and environment, charging that they are GATT-illegal nontariff trade barriers. Whenever the United States loses these cases (and the burden of persuasion is on the defendant) it has either to repeal the offending law or pay perpetual trade sanctions to the winning nations.

This process is all the more disconcerting for U.S. citizens because the procedures followed by these trade dispute panels are far inferior to those we take for granted in our own court rooms and legislatures. The documents, transcripts and proceedings of these trade dispute panels, for example, would be kept secret from the public and the media. Such intolerable WTO secrecy prompted 51 leading American journalists and media leaders to write a letter of protest to President Clinton last month. "All of us urge you to restore democratic openness to this crucial process. To do otherwise would break a sacred pact with the American people." (See attached letter.)

If the WTO is established, some corporate law firms will match-up domestic companies that don't like our safety laws with companies abroad in order to persuade a foreign government to challenge the United States before WTO trade dispute panels. The same domestic-foreign alliance will also press legislatures and agencies to repeal WTO-invalidated laws or standards rather than pay the tribute to keep them.

The perilous implications of this trade dispute system for the sovereignty of the 50 states prompted the eminent constitutional scholar, Harvard Law Professor Laurence Tribe, to write letters in recent weeks to President Clinton and Sen. Robert Byrd. Tribe asserted that the "shift of sovereignty from state and local governments to the proposed World Trade Organization" was so substantial "that the agreement requires Senate ratification as a treaty," meaning the approval of two-thirds of the Senate. Instead, President Clinton has rushed the massive trade agreement to Congress in its final pre-adjournment days, seeking a simple majority vote in each House. He has chosen not to publicly discuss these issues prior to this hearing.

Since Professor Tribe is testifying before this committee on how the framers carefully crafted the treaty clause to ensure that the Senate had ample means to safeguard state sovereignty from international incursions, this testimony will first focus more generally on the sovereignty implications of the WTO.

THE WORLD TRADE ORGANIZATION AGREEMENT WOULD ESTABLISH A NEW, POWERFUL INTERNATIONAL ORGANIZATION

The WTO Agreement Would Establish A System of International Governance

The Uruguay Round of the General Agreement on Tariffs and Trade ("GATT") consists of dozens of trade agreements and understandings establishing rules for restricting nontariff trade barriers in a variety of economic sectors, which were submitted by President Clinton to both Houses of Congress for approval under fast-track, no-amendment procedures as congressional-executive international agreements. One of the Uruguay Round agreements is the Agreement Establishing the World Trade Organization ("WTO"), which the President also plans to submit to Congress for approval by simple majorities of each House.

However, the WTO Agreement is not simply an agreement establishing global trade rules under Congress's power to regulate foreign commerce. Even a cursory reading of the WTO Agreement demonstrates that it establishes a permanent international organization with extensive powers to develop, implement, and enforce such rules. Accordingly, it must be viewed as a system of penetrating international governance, not just as a trade agreement.

The Senate has ratified by a two-thirds vote U.S. entry into comparable international organizations—and even many that are trivial by comparison. Among the international agreements that the Senate ratified by a two-thirds vote are:

- The Convention for a North Pacific Marine Science Organization;
- The Convention establishing an Inter-American Tropical Tuna Commission;
- The Convention of the World Meteorological Organization;
- The Treaty governing activities of states exploring outer space;
- The U.S.-Canada convention to protect migratory birds;
- The international convention to facilitate the importation of commercial samples and advertising materials; and, even
- The convention creating the original, innocuous WTO, the World Tourism Organization.

If two-thirds of the Senate approved the World Tourism Organization, certainly the World Trade Organization Agreement, which grants international tribunals unprecedented authority over the democratic laws of this Congress and those of the 50 states, deserves at least the same degree of caution and consideration that the framers provided for in the Treaty Clause of the Constitution.

Few legislators have considered what adoption of the Uruguay Round agreement would mean to U.S. democracy, sovereignty and legislative prerogatives. As the world prepares to enter the twenty-first century, the proposed WTO system of international governance would lead nations in the wrong direction.¹ The terms of the

¹The Uruguay Round deal is a sizable step backwards even from the North American Free Trade Agreement (NAFTA) in failing to recognize the unavoidable entanglement of environmental, health and labor rights policies with trade priorities. While I have said that NAFTA did not deal with the environmental and labor issues in any effective manner, they rose to the center of the public and congressional debate. For instance, as noted in the *Wall Street Journal* the day after the NAFTA vote: "The NAFTA battle clearly leaves a powerful legacy: It gave respectability to the notion that something is fundamentally unfair about trading with poor nations whose labor costs undercut those in the United States. * * * Moreover, the brawl over NAFTA has spawned a permanent trade opposition * * *" (*Wall Street Journal*, November 18, 1993.) NAFTA exempted provisions of several important international environmental treaties from trade challenges, provided that the provisions were required by the treaty and that a less trade restrictive method of compliance was not available. The relevant treaties were the U.N. Convention on International Trade in Endangered Species or Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. By contrast, the

Uruguay Round would expand the nature of the world trade rules in an autocratic and backwards-looking manner, replacing the GATT contract existing since 1947 with a new international organization—the World Trade Organization. The system of international governance of the World Trade Organization would be chronically secretive, non-participatory and not subject to any independent appeals process. Yet decisions arising from such governance can pull down our higher living standards in key areas or impose trade fines and other sanctions until such degradation is accepted.

A major result of this transformation to a World Trade Organization would be to undermine citizen control and chill the ability of domestic democratic bodies to make decisions on a vast array of domestic policies from food safety to federal and state procurement to communications and foreign investment policies. This chilling factor is all the more significant since domestic corporate interests and their government allies will use the “WTO-illegal” chilling argument against new citizen initiatives that arise in their own country.

Most simply, the Uruguay Round’s provisions would preset the parameters for domestic policy-making of legislative bodies around the world by putting into place comprehensive international rules about what policy objectives a country may pursue and what means a country may use to obtain even GATT-legal objectives, all the while consistently subordinating non-commercial standards, such as health and safety, to the dictates of international trade imperatives. Moreover, the GATT-WTO’s harmonization and equivalency provisions for different health, safety and other laws are subordinated to the supremacy of foreign commerce.

Decision-making power now in the hands of citizens and their elected representatives, including the Congress, would be seriously constrained by a bureaucracy and a dispute resolution body located in Geneva, Switzerland that would operate in secret and without the guarantees of due process and citizen participation found in domestic legislative bodies and courts. As well as undermining democratic decision-making, establishment of the WTO would increase the primacy of the global trade rules over all other policy goals and domestic laws on the federal, state and local levels. This Congress must evaluate the new GATT as a political and legal document, not just as an economic document.

The Uruguay Round agreement would:

- Establish a new global commerce agency, the World Trade Organization (WTO) with increased power, closed procedures and outdated substantive “trade über alles” rules;²
- Greatly expand the reach of global trade rules to impose new restraints on many nontariff policies, such as food safety, that traditionally have been controlled domestically; and
- Significantly strengthen secretive dispute resolution mechanisms, thus guaranteeing stricter enforcement of the global trade disciplines over every country’s domestic laws and policies.

Taken as a whole, the texts coming out of the Uruguay Round negotiations would strengthen and formalize a world economic government dominated by giant corporations, without a correlative democratic rule of law to hold this economic government accountable. No one denies the need for international trade and investment. However, societies should shape their trade policies to suit their economic and social needs—securing livelihoods for their inhabitants and their children, as well as safe and clean environments.

The WTO Agreement Would Establish A Powerful, International Organization

The Uruguay Round would fundamentally transform the nature of the world trade rules by replacing what has been a contract between countries (GATT) with a formal, powerful international organization (WTO) possessed of a “legal personality,” similar to that of the United Nations.³

When the General Agreement on Tariffs and Trade (“GATT”) was developed, it was intended to be the rules that would be administered by a new international organization—the International Trade Organization (ITO). However, in large part, because the U.S. Congress balked over sovereignty issues concerning the establishment of the ITO in 1947, that body never came into being. As a result, the GATT rules have had no established institutional organization.

Although a bureaucracy has evolved to administer the GATT rules, the inaction of the U.S. Congress has denied the GATT the authority to operate as a formal

Uruguay Round does not exempt significant international treaties; its mandate is trade über alles.

² Agreement to Establish the WTO.

³ Agreement establishing the WTO, Art VIII-1.

international institution. As an informal institution lacking the legal or political authority to act independently or definitively, the GATT has refrained from interpreting the GATT rules or from taking actions without the express authorization of the GATT contracting parties, which is ordinarily through a cumbersome consensus-forming process.

The Uruguay Round would establish the WTO—a new international organization with independent legal personality and an explicit mandate to administer and enforce the Uruguay Round agreements, along with the existing GATT and other related trade agreements. This body would be a permanent organization with legal status like the United Nations and the North American Treaty Organization, both of which the United States entered by virtue of Senate ratification of treaties.

The WTO would have broader powers and a more authoritative infrastructure than has the existing GATT. Its approval would represent a fundamental shift of control and authority in the international trade regime from governments to the WTO institution. For example, the WTO allows changes to some rules by a two-thirds vote of the members which would then be binding on all members.⁴ Under the existing GATT, such changes have been made through new negotiations, the results of which have been binding only upon those countries that agree to be bound by them. In addition, members of the WTO must agree to be bound by all the multilateral Uruguay Round agreements, whereas at the conclusion of past rounds of GATT negotiations, countries could choose which agreements to enter into.⁵ Furthermore, WTO entities “shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements,” which may be adopted by three-fourths majority of the members.⁶ Under the existing GATT, interpretations are adopted by consensus.

One serious flaw of the GATT implementing legislation is it fails to require the Executive Branch to get the approval of the U.S. Congress before voting to change or adopt international trade rules. The absence of a specific requirement for congressional approval underscores the powers ceded to the Executive Branch and to this international organization to expand world trade rules.

The WTO also establishes numerous standing committees that may initiate negotiations, whereas under GATT, negotiations could be initiated only by consensus of all the contracting parties.⁷ The Uruguay Round also provides for periodic assessments by the WTO of each member's trade policies and practices and their impact on the international trade system.⁸

The WTO would also have greater powers than the current bureaucracy has to enforce GATT rules. As with the GATT, WTO dispute resolution allows a Member nation to challenge another Member's domestic laws (including state and local laws) as illegal barriers to trade. Such challenges are decided in secret by panels of three trade experts. The dispute settlement process under the WTO lacks the procedural safeguards of the U.S. federal and state judicial systems:

- Panels are comprised of trade experts. The required qualifications for WTO panelists, such as experience in a country's trade delegation or experience as a trade lawyer bringing a trade dispute, ensure that panels will have a uniformly narrow trade perspective;⁹

- Panels have no guarantee of impartiality, economic disinterest of panelists or other conflict of interest safeguards. Thus, while USTR Kantor is challenging a recent Canadian trade panel for conflict of interest, he is also urging Congress to approve more of the same under the WTO;¹⁰

- The burden of persuasion is on the defendant;¹¹
- All documents and proceedings are secret. Unlike complaints, briefs and affidavits in the U.S. court system, documents presented to the panel are kept confidential.¹² Countries, if they wish, may release their own submissions. However, the

⁴ Agreement Establishing the WTO, Article X, paragraphs 4, 5.

⁵ Id. paragraph 2.

⁶ Id., Article IX, paragraph 2.

⁷ Id., Article X, paragraph 1.

⁸ Annex on the Trade Policy Review Mechanism.

⁹ Id. at 8.1.

¹⁰ Journal of Commerce, February 18, 1994. The two panelists were attorneys whose law firms represented Canadian lumber interests or the Canadian government, both of which were directly affected by the outcome of the timber subsidy case under dispute.

¹¹ According to the Final Texts of the Uruguay Round Agreements, “There is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.” (Annex 2, Art. 3.8.)

¹² Id. at 3 for regular panel reports. Id. at 18.2 for Appellate Reports.

other nations' documents and all tribunal documents are strictly confidential and there are no transcripts of panel proceedings;¹³

- There is no mechanism to allow outsiders (which includes subnational states) to present information to a panel; and
- There is no outside appeal or review available.

The dangers posed to U.S. laws by the trade dispute panels are not merely hypothetical. These laws are among many U.S. federal and state statutes and rules marked for challenge in recent reports by the European Union, Japan and Canada.

These problems are made more important in the WTO context by the enhanced power under the WTO to adopt and enforce dispute settlement determinations. The determinations made by dispute settlement panels would automatically become binding on the member country, unless all the member countries, including the winning nations, vote not to make the decision binding. Currently, decisions are not adopted, unless all countries agree to do so. Thus, powerful countries, like the United States, have an effective emergency brake because they can block final adoption of politically unacceptable GATT decisions, as was done with two separate rulings upholding first Mexican and then European Union challenges to the U.S. Marine Mammal Protection Act. The act prohibits imports of tuna caught through methods that kill or maim dolphins.

In addition, if a country losing a trade challenge does not change a measure found to be in violation of GATT rules within a prescribed period of time, other countries challenging that measure have an automatic right to impose retaliatory trade sanctions, including cross-sectoral retaliation that strikes economic sectors other than the one that was the subject of the foreign challenge. Currently, a separate unanimous authorization from all GATT contracting parties is required before trade sanctions may be imposed, something that has occurred only once in GATT history. Thus, unlike the GATT regime, under the WTO, the United States would quickly face a no-win decision for any U.S. or state law found by a panel to violate the WTO rules: change the U.S. law or face permanent trade sanctions until the law is repealed or changed.

U.S. Trade Representative Mickey Kantor repeatedly downplays the significance of this threat, suggesting that the benefits that the stronger trade dispute resolution system will bring the United States by opening up foreign markets will far outweigh any inconvenient limitations that the system may place on our domestic, democratic legislative powers. "There is no question that the United States will benefit greatly when we initiate a WTO dispute settlement action," Kantor wrote Senators on Aug. 18. "This is particularly important for us, since we bring more cases than any other country."

Craftily, Kantor offered Senators a very limited and skewed picture of the data, which, taken as a whole, support the arguments made by GATT critics. The doctored snapshot Kantor offered is a reasonable interpretation of GATT trade challenge data up until 1980. But thereafter, when the Tokyo Round of GATT took effect, the number of GATT challenges skyrocketed (see the graph in the document attached in the appendix, "United States Is Now a Target of More GATT Trade Challenges Than it Initiates." After 1980, in an important historical reversal, the United States consistently became a GATT defendant more often than a GATT plaintiff.

Indeed, 1980 was a watershed year because the Tokyo Round opened the door to increased challenges against nontariff trade barriers. A nontariff trade barrier is a domestic law that is found to have the effect of interfering with international trade. Examples include such important public policies as a ban on cancer-causing pesticides or consumer labeling requirements for food. The United States became a lightning rod for nontariff trade barrier challenges for two reasons. First, this country is a world leader in approving and enforcing protections that protect consumers, workers and the environment, the very kinds of laws that the Tokyo Round authorized foreign countries to challenge. Second, the United States has the world's largest market, making it a far more tempting target of trade challenges than countries that have small populations or whose workers earn such meager wages that they provide a poor market for imports. Unfortunately, most of markets of the 116 other GATT-signatory countries have little to offer U.S. firms apart from workers willing to toil for a minuscule wage. Under the proposed GATT, the incentives for foreign

¹³ The extent of the secrecy is emphasized by what is being labeled an important improvement in openness: The WTO text allows countries to request a "non-confidential summary" of the information contained in official submissions that could be disclosed to the public. This requirement is not an adequate substitute for disclosure of the submissions themselves, because the contents of the summaries need not fully disclose all of the evidence and arguments of the actual submissions.

nations to increase their nontariff trade challenges against the United States would flow from the United States no longer having an effective veto through the consensus doctrine of the existing GATT.

Establishment of the World Trade Organization Would Greatly Increase the Impact Global Trade Rules Will Have on Countries' Domestic Laws

Congressional approval of U.S. membership in the WTO would greatly expand the reach of global trade rules to impose new restraints on many nontariff policies that traditionally have been controlled domestically. This is particularly significant because the Uruguay Round agreements include substantive trade disciplines in new areas, such as agriculture, telecommunications and transportation services, and intellectual property. The Uruguay Round would also put in place more pervasive restrictions in areas such as food standards and "technical standards" such as environmental or safety standards and procurement policies.

The expansiveness of the Uruguay Round negotiations means that almost any domestic law that impacts international trade could be considered a "nontariff barrier." Only laws that are more protective of the environment or consumer or worker health and safety are exposed to challenge; extremely weak laws cannot be challenged as providing an unfair subsidy for products or services that fail to meet even minimal international standards in these areas. Thus, the GATT rules envision placing a ceiling on health, safety and environmental protection, but provide no minimal floor beyond which all nations must rise (except against prison labor). One does not have to guess which country's standards are most likely to be pulled downward. Bans on imported products made by child labor in member nations would be considered, along with human rights stipulations, impermissible unilateralism under the proposed GATT-WTO.

In the attached Annex, I have suggested the likely risks to our existing laws which the WTO rules, in combination with the strengthened dispute procedures, would pose by applying just two of the WTO's chapters on food and other standards to some existing and proposed U.S. laws. Please read that Annex, as it will make vivid how the WTO's terms could affect a broad array of important U.S. policies.

All of the substantive trade rules that resulted from the Uruguay Round negotiations (agreements on trade in goods and services, intellectual property rules and more) fall under the WTO structure. Countries are obliged to ensure that their domestic laws conform with the substantive trade rules of the WTO under an extremely worrisome provision, Article 16-4 of the WTO text, which requires that:

Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.¹⁴

This obligation is much more stringent and inflexible than similar provisions in other trade agreements, including the 1991 "Dunkel" draft text of the Uruguay Round which required countries only to "endeavor to take * * * steps as are necessary."¹⁵ Even under this weaker formula, the Congressional Research Service concluded in an 1991 analysis of the "Dunkel" draft text that: a "party would no longer have control over whether or not it must change that particular policy or law (a successfully challenged law or policy) to conform with the GATT."¹⁶

THE SENATE SHOULD INSIST THAT THE WTO AGREEMENT BE SUBMITTED TO THE SENATE FOR TREATY RATIFICATION

The Constitution provides two mechanisms for Congress to approve international agreements. First, under the treaty clause, "the President shall have the power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." U.S. Const. Art. II, § 2. In other words, the Senate has the power to decide whether the United States will enter into treaties. Second, some international agreements may be approved by simple majorities of both Houses of Congress. For example, because Congress has the power to regulate commerce with foreign relations, international agreements establishing tariff schedules and trade rules may be approved by two Houses of Congress.

The question I am addressing here is not whether the trade rules set forth in the Uruguay Round agreements must be ratified by two-thirds of the Senate. There is little question that such rules may be approved by simple majorities of both Houses. The issue here is whether the Agreement Establishing the WTO must be ratified as a treaty.

¹⁴ Agreement Establishing the WTO, Article XVI-4.

¹⁵ Agreement Establishing the Multilateral Trade Organization, XVI-4 (1991.)

¹⁶ CRS Legal Memo on Domestic Law Effects of the Dunkel Text's WTO Provisions for Representative Jill Long, April, 1992.

Although Congressionally approved international agreements and treaties have been used interchangeably in recent years, certain significant obligations may only be undertaken through treaty arrangements. After all, the U.S. Constitution gives the Senate the treaty ratification power. While it is true that Congressionally approved international agreements have been used increasingly in recent years in place of treaties, recent custom cannot override the Constitution. The treaty clause must have some meaning. The Constitution does not permit the President to choose for purely political reasons whether or not to give the Senate the power to approve a particular international obligation as a treaty. To do so is to trample on Senatorial prerogatives.

At a minimum, when an international action is of great significance both domestically and internationally, it should be undertaken as a treaty. Stated differently, an international agreement that would involve the significant loss of U.S. sovereignty calls the treaty clause into play. In fact, when the Senate Finance Committee debated this very issue in connection with its consideration of the ITO, Senator Eugene D. Millikin, chairman of the Committee, provided the following test for determining when a treaty should be submitted to the Senate for two-thirds approval:

The proper distinction, I suggest, is that when we go beyond these conventional matters (duties, custom matters and foreign trade), and commence to surrender sovereignty, that is the point where the proper field of treaty comes in.¹⁷

Whenever you come to a matter where there is a substantial disparagement of our sovereignty, whenever you come to a matter where sanctions may be invoked against the United States, by an international body, then I respectfully suggest that you have probably entered the legitimate field for treaties.¹⁸

Apart from these general guiding principles, the State Department, which has a political interest in giving the President free reign in this area, has recognized that some international agreements must be ratified through the treaty process. The State Department has developed five factors that counsel in favor of using a treaty-method of approval:

1. The subject matter is not wholly within the powers of Congress or the constitutional authority of President.

2. The agreement involves important commitments affecting the nation as a whole.

3. The subject matter has traditionally been handled in treaties.

4. Formality is desired in the interest of long, continued respect for its terms.

5. The agreement is to have the force of law without legislative action.—State Department Circular 175.

On balance, these factors require treaty ratification of the WTO Agreement.

First, there can be no question that the subject matter (whether it is defined as regulation of foreign commerce or entering into a permanent international organization) is not wholly within the exclusive powers of Congress or the President. Rather, it is a quintessentially shared power. Congress has the constitutional power to regulate foreign commerce, and the President has the power to negotiate international matters, including trade concessions. Since Congress's authority over the subject matter is constitutionally prescribed, it is beyond dispute that the President may not unilaterally bind the United States to a set of international trade rules. The more critical issue here is whether the Senate has discrete constitutional authority regarding the U.S. entry into such a powerful international organization.

Second, the WTO Agreement unquestionably involves important commitments affecting the nation as a whole. As the debates over relinquishing U.S. sovereignty to the WTO demonstrate, this is an exceedingly important commitment for the United States. The WTO system would shift power from citizens and domestic legislators and regulators to international trade bureaucrats to an extent unprecedented in our history. The WTO does not represent a simple evolution of the GATT; it revolutionizes the GATT regime by creating a formal international organization with the power and the mandate to ensure that international trade rules are strengthened and implemented throughout the world.

Third, although trade agreements have traditionally been approved by simple majorities of both Houses of Congress, the United States has traditionally entered into powerful international organizations through treaties. As a matter of practice, the United States has joined significant standing international organizations, such as the United Nations and the North American Treaty Organization by treaty.

¹⁷ Hearings on Trade Agreements Systems and the Proposed International Trade Organization Charter, before the Senate Finance Committee, 80th Congress, 1st Session, p. 168 (March 25, 1947).

¹⁸ *Id.*, pp. 168-169.

In 1947 the President ultimately submitted the International Trade Organization to both Houses of Congress after it became clear that it would not garner the support of two-thirds of the U.S. Senate. However, the ITO lacked sufficient public and congressional support even to reach a floor vote. As a result, the political maneuvers of the time were never tested politically or legally.

The WTO Agreement would convert an international contract that had no legal infrastructure into a permanent international organization that has self-perpetuating and pervasive enforcement powers. There is no precedent for authorizing U.S. participation in such a body with such permanence and extensive powers without Senate ratification.

Fourth, given the magnitude of the WTO undertaking, formality is desired in the interest of long, continued respect for its terms. By its terms, it must be ratified in accordance with appropriate domestic legal procedures. The countries negotiating the WTO Agreement recognize its importance and the extent to which it significantly expands and strengthens the multilateral trade regime. Accordingly, European and other countries plan to put the WTO through full treaty ratification processes. Other countries may be surprised and distrustful if the WTO Agreement is not ratified as a treaty in strict compliance with the U.S. Constitution.

Fifth, neither the WTO Agreement nor the other Uruguay Round Agreements can have the force of law without legislative action. That much goes without saying. The question is what form that legislative action will take. Since the treaty clause must have some meaning, the President may not unilaterally decide to obtain legislative approval from Congress as a whole, where treaty approval is required.

The Senate should insist that the President not eliminate the Senate's constitutional authority by submitting an agreement that should be ratified as a treaty to both Houses of Congress for fast-track approval. There is ample precedent for such Senatorial objections. Thus, when President Carter suggested that he would resubmit the Panama Canal Treaty as an international agreement, if the Senate failed to ratify it as a treaty, several Senators objected to this approach and took the position that the treaty clause requires that, normally, significant international commitments be made with the concurrence of two-thirds of the Senate. The issue was put to rest when the Senate ratified the Panama Canal Treaty.

In addition, the Senate Foreign Relations Committee, through its legislative counsel, took the position that the Sinai Accords, which were approved as a congressionally approved agreement, had to be ratified as a treaty because they dealt with a subject matter of exceptional national importance, made financial and possibly mutual defense and security commitments, and required Senate advice and consent under the Circular 175 criteria employed by the State Department. Although the Sinai Accords were ultimately approved by simple majorities of both Houses, the constitutional propriety of that approach was never resolved, and continues to be debated.

The attributes of the Sinai Accords that led the Senate Foreign Relations Committee to conclude that they should be ratified as a treaty pale in comparison to the magnitude and pervasiveness of the commitments in the WTO Agreement, which would establish an international organization that could expand, implement, and enforce world trade rules. The WTO Agreement is analogous to the other significant international organizations that have fueled Senate debates over promoting world government. The United States has not lightly relinquished this degree of its sovereignty to such an international authority, nor should it.

Although the State Department has a process for determining the status of an international agreement, including whether it must be submitted to Congress for approval by simple majorities or to the Senate for ratification by two-thirds majority, this issue is too important and too political to be left to resolution through that process. As part of the Executive Branch, the State Department is a partisan player intent on claiming that the President has the unilateral right to choose for purely political reasons the congressional method of approval of international agreements. Neither the President nor the USTR asked the State Department to issue a legal opinion on the status of the North America Free Trade Agreement or the Supplemental Agreements on Labor and Environmental Cooperation because those agreements were too significant and politically sensitive, and the State Department never did so. The Congressional approval mechanism for the WTO Agreement can also be expected to be chosen at high levels of the Executive Branch for political reasons.

The treaty ratification power belongs to the Senate. However, the President is trying to deny the Senate that power by submitting the WTO Agreement to both Houses of Congress. If the President is permitted to erode the Senate's treaty power in this manner, that authority will continue to lose its constitutional meaning.

CONCLUSION

All over the country there is a bubbling up of citizen activity dealing with the environment and public health. People want solar energy instead of fossil fuels; they want recycling; they want to clean up toxic waste dumps; they want safer, biodegradable, environmentally benign materials instead of others that happen to be sold in greater numbers worldwide. And if local or state governments can make decisions to help achieve these goals, then people can really make a difference. But if existing or proposed local and state standards can be chilled by a foreign country's formal accusation (often in collaboration with domestic corporate interests) that the standards are a nontariff trade barrier, then the progress of health and safety standards here and around the world will be stalled or degraded. Breakthroughs do not only occur at the national level. Often, a smaller jurisdiction—a town, city or state—experiments with a standard, other cities and states copy it and, eventually, national governments and international governments, lagging behind, follow the local lead.

This percolating-up process for advancing crucial non-commercial values that shape living standards will be stifled by the WTO, with bottom-up democratic impulses replaced by pull-down mercantile dictates. It is inevitable that different policy goals will at times conflict, for instance goals of maximizing trade and goals of public health and environmental protection. However, the decision about which policy goal should take precedence in a particular instance should be decided by those who will live with the results. Under the WTO, those decisions would be subordinated to commercial trade priorities and are largely shifted away from citizen control and domestic democratic institutions to a dispute resolution body located in Geneva, Switzerland which operates in secret and without the guarantees of due process and citizen participation found in domestic courts and legislatures.

The WTO runs counter to the democratic structure that protects our domestic federal and state sovereignty, and, to apply President Clinton's recent exhortations, that "promotes democracy abroad." For it is democracy, not autocracy, that is the strongest and fairest engine for sustainable economic development.

The President has decided for political reasons to submit the WTO Agreement to Congress for approval by simple majorities of both Houses. In this way, he hopes to dilute the Senate debate over relinquishing significant U.S. sovereignty to this powerful international organization that will develop, implement, and enforce world trade rules. Congress's control over the development of trade policies will be significantly diminished under the WTO. So too will be undermined the practice of state sovereignty—an international erosion of federalism that should invite, at the least, a public briefing and consultation summit directly between various state and federal officials as soon as possible. The United States has never before entered into such a powerful international organization without treaty ratification. Given the magnitude of the undertaking, strict adherence to constitutional treaty ratification procedures is imperative.

It is the duty of this Committee and the Senate to assess the broadest implications of the WTO on the continued viability of democratic institutions here at home. In two, three or four decades, when historians look back on this period during which so much of the "global order" is being reconfigured, they will point to the U.S. Congressional debate and consideration of the Uruguay Round as a turning point in the post cold war era. Either they will focus on it as a moment in which the Congress resisted the anti-democratic WTO, or they will view it as the moment in which Congress ceded authority to shape the interests of this country and its inhabitants to this new autocratic international body. The Senate must take control and responsibility for this debate and for the ultimate decision.

There is much support throughout the country for rejecting the proposed GATT-WTO and sending it back to Geneva for renegotiation. All national environmental groups, all trade unions and all, but one, of the nation's consumer groups are opposed to this agreement as presently written. So are many church, animal rights and farm groups. And if the media had reported this controversy with modest attentiveness over the past year, even more Americans would be seriously questioning the Clinton Administration's frenetic push for GATT passage with very limited public debate, more than a few special benefits for certain companies and industries and no amendments permitted.

The proposed GATT-WTO regime tests the stamina for democracy. May the U.S. Senate rise to this historic occasion and affirm democracy over international autocracy.

Thank you.

ANNEX—EXAMPLES OF HOW THE URUGUAY ROUND WORLD TRADE ORGANIZATION COULD UNDERMINE DEMOCRACY, SOVEREIGNTY AND CONGRESSIONAL PREROGATIVES

The Uruguay Round could undermine U.S. and state policies by limiting the goals the U.S. may pursue in its standards and by limiting the means the U.S. may use to promote those goals. The gravity of the Uruguay Round mandates is compounded because trade challenges to all policies will be resolved by trade experts in the secret system described above that is stacked against consumer, labor and environmental interests.

In this annex, two chapters of the World Trade Organization's substantive trade rules concerning standards have been interpreted to demonstrate their undermining effect on existing and proposed U.S. legislation. The Uruguay Round's principal standards provisions are found in the Agreement on the Application of Sanitary and Phytosanitary ("SPS") Measures, which addresses food and agricultural standards¹⁹ and in the Agreement on Technical Barriers to Trade ("TBT"), which covers all product regulation other than that addressed in the SPS Agreement.²⁰ Both Agreements address a vast expanse of domestic regulations, ranging from end-product criteria to labeling and packaging requirements to risk assessment methods to testing, certification, inspection, and approval procedures.

The Uruguay Round Limits the Means Employed to Achieve WTO-Allowed Policy Goals

The Uruguay Round imposes significant limitations on the means used to accomplish even World Trade Organization-legitimate goals, if such means have trade effects. As a general matter, measures must be the "least trade restrictive." So far, this rule has only been established in a series of GATT dispute resolution cases. Approval of the Uruguay Round text, which specifically contains this requirement in numerous places, would give political approval to this policy for the first time. Then, a variety of policy goals that are only politically achievable through means that have greater trade impacts would be World Trade Organization-illegal.

For instance, raw log export bans are one of the most trade restrictive means to attain the goal of conserving our nation's forests. Yet, after years of debate, raw log bans were the only politically feasible approach because they accommodated the interest of providing alternative lumber processing jobs to those who would no longer be cutting down forests. Laws with such mixed economic and social purposes, of which there are many, would likely fall victim to challenges under the World Trade Organization's rules.

1. *Technical Standards.*—Technical standards include all non-food standards, such as OSHA specifications, product safety and labelling rules, bans on asbestos and other dangerous substances and literally any other law that provides standards for products or services. The World Trade Organization's rules on technical standards require that the means used to achieve even allowable goals in technical standards be the least trade-restrictive alternative. Thus, technical regulations may not be "prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade."²¹ In addition, technical regulations may "not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner."²²

- Under these provisions, Canada could argue, as it did in an amicus brief, that a phaseout of all asbestos should not apply to the asbestos produced in Canada because, Canada argued, its asbestos presents less of a health risk than other asbestos and can be controlled through use restrictions.

- Recycling schemes and packaging requirements may be vulnerable. In past trade challenges, the European Court of Justice invalidated a component of a Danish recycling scheme requiring the use of reusable containers that could be handled by facilities in Denmark, and the U.S. complained that Ontario's imposition of high-

¹⁹ Sanitary and Phytosanitary Measures include standards to protect human, animal, or plant life or health from risks arising from additives, contaminants, toxins, diseases, or pests, where such measures may, directly or indirectly, affect international trade (SPS Agreement, Annex, paragraph 1.)

²⁰ TBT Agreement paragraph 15; Annex 1, paragraphs 1-3.

²¹ (TBT Agreement paragraphs 2.2, 5.1.2.) The sentence which states that technical regulations may not be "more trade-restrictive than necessary to fulfill a legitimate objective, taking into account the risks non-fulfillment would create" (Id. at paragraph 2.2.) is immediately followed by factors that must be taken into account "[i]n assessing such risks," thereby envisioning a risk assessment or cost-benefit analysis. Conformity assessment procedures may not be more strict or applied more strictly than necessary to give confidence that products conform to technical regulations and standards. (Id. at paragraph 5.1.2.)

²² Id. at paragraph 2.3.

er taxes on recyclable beer containers than on reusable ones discriminates against U.S. beer, which is sold largely in cans, as compared with Canadian beer, which is sold largely in bottles. The United States alleged that the Canadian scheme was not the least trade restrictive alternative, and the European Court of Justice ruled that the Danish program put a disproportionate burden on trade for the goal it achieved.

- If the U.S. decided to ban asbestos-lined brakes because U.S. workers are exposed to the asbestos when they install or repair the brakes, another country could argue that the ban is unnecessary because the workers could use protective clothing and ventilation to limit the risk.

- Congress has recently passed, and the President is expected to soon sign, the Child Safety Protection Act, which includes a measure to ban toy balls with a diameter less than 1.75 inches for small children. A challenger could argue that the measure is unnecessary because of inadequate evidence of harm or that hard plastic or wood balls should not be subject to it in fact.

- If OSHA phased out cadmium batteries because the cadmium leaches into ground-water in landfills, a challenge could be mounted because most substitutes also contain heavy metals that would present similar problems.

2. *Food Safety Standards.*—Under the Uruguay Round, food standards may be “applied only to the extent necessary to protect human, animal or plant life or health.”²³ In addition, countries must ensure that their food safety measures “are not more trade restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility.”²⁴ Note that political feasibility is not included as a relevant consideration.

Under the least trade-restrictive alternative test, any product ban may be called into question, since bans are the most trade-restrictive measures available. Thus, a ban could be challenged on the ground that permitting small exposures, labeling foods, or washing or other handling precautions would meet the level of protection.

- An EPA ban on pesticide residues on a particular food could be challenged on the ground that permitting trace residues would achieve the same level of protection.

- EPA’s coordination policy precludes carcinogenic pesticides on raw commodities, where the pesticide concentrates in processed foods. The Delaney Clause prohibits residues of the carcinogenic pesticides only in the processed foods, but EPA has extended the pesticide ban to raw commodities because it does not know, e.g., which tomatoes will be used to make tomato sauce. A challenger could argue, as industry has, that this policy is not “necessary” because FDA could monitor the processed foods for the residues instead.

- Bans on dyes, genetically altered produce, or fish with lead levels safe for everyone, except pregnant women, children or other vulnerable populations, could be challenged on the ground that warnings would suffice.

- The Circle of Poisons Prevention bill, which, if enacted, would ban the export of certain hazardous pesticides in part to prevent them from being used on foods exported back to the U.S. A challenger could argue that the export ban is not necessary because permitting the export but monitoring for the residues would achieve the chosen level of protection.

The “taking into account technical and economic feasibility” language may prevent a country from using its chosen means because of economic considerations. It might also preclude the use of technology-forcing regulations that impose stringent requirements in order to force technological improvements, such as EPA’s phaseout of uses of the pesticide carbofuran, even though substitutes were not available when the phaseout was established, or a ban on the use of lead solder in food cans five years from now in order to force industry to come up with alternatives.

Aspects of the 1990 Nutritional Labeling and Education Act also might be vulnerable to a trade-restrictive alternative challenge. Thus, mandatory labeling designed to provide consumers information about carcinogens or potentially harmful additives, such as salt, MSG, nitrites, or sulfites, could be challenged on the ground that voluntary labeling would suffice or that not all foods need to be covered by manda-

²³ SPS Agreement at paragraph 6.

²⁴ (Id. at paragraph 21.) A footnote provides that “a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade.” (Id. at paragraph 21 n.3.) The alternative measures need only be technically and economically feasible—they do not need to be politically feasible.

tory requirements. Indeed, both Japan and the European Union have already made claims that the U.S. mandatory nutritional labeling is an unfair trade barrier.²⁵

The Uruguay Round Limits the Goals that Countries May Pursue

1. *Technical Standards.*—The Technical Barriers to Trade Agreement allows the legitimacy of a country's objectives to be called into question, and also substantially limits the reasons that a country may employ to justify not using an international standard.

Under the Uruguay Round, U.S. technical standards must be based on international standards, even where the international standards are not yet completed, but their completion is imminent.²⁶ The only exception is when the international standard "would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems."²⁷

Note that the examples are both modified by the word "fundamental" and they are objective rather than subjective conditions. Noticeably omitted from the list of exceptions is that the international standard provides an insufficient level of protection, a factor specifically listed in an analogous provision elsewhere in the TBT Agreement.²⁸ The international standards serve as a ceiling, not a floor, curtailing innovative solutions to public health problems that are ahead of the international status quo, but not requiring that any solutions be put into place. In other words, the Uruguay Round contains no incentives, let alone any mandates, that countries, at a minimum, afford the level of protection provided by relevant international standards.

2. *Food Safety Standards.*—Under the Uruguay Round, food safety measures:

- must be "based on scientific principles;"
- must "not be maintained without sufficient scientific evidence;" and
- must be based on a risk assessment, taking into account risk assessment techniques developed by relevant international organizations.²⁹

These scientific and risk assessment requirements may jeopardize cutting-edge food safety regulation in areas, such as food irradiation, biotechnology, and the use of growth hormones in beef production, where the scientific evidence is not yet in, but a country wishes to protect its citizens from possible, but uncertain, harm under the precautionary principle.

• Indeed, although the case was never brought to a GATT dispute resolution panel, the United States claimed that a European Community ban on imports of hormone-treated beef lacked scientific support, and thus was a disguised restraint on trade.

• Laws such as the Delaney Clause, which prohibits the use of certain carcinogenic food and color additives, are at risk because it is a 30-year-old congressional policy judgment to protect the public from uncertain risks that is now attacked by industry as scientifically outmoded. As a measure setting a zero-risk standard, permitting no exposure to certain additives, it is not based on quantitative risk assessment.

• California's Proposition 65, which requires warnings before exposing the public to cancer-causing substances or reproductive toxins, would be threatened because it was adopted as a popular referendum not a regulatory determination "based on scientific principles" and risk assessment.

The European Union has threatened to challenge both the Delaney Clause and Proposition 65 as unfair trade barriers.³⁰

[Appendices consisting of "USTR Secrecy Target of Two New Lawsuits," Public Citizen, 10/17/94; President Clinton letter to Ralph Nader, 10/5/94; "Clinton Administration Exaggerates GATT Gains," Janice Shields, Ph.D.; "More Than 90 Calif. State Laws At Risk Under GATT," Center for Policy Alternatives, 9/27/94; "News Leaders Demand Access to WTO Deliberations," Freedom Forum First Amendment Center, 9/14/94; Harvard Law Professor Laurence Tribe's letter to President Clinton,

²⁵ The Uruguay Round also prohibits arbitrary or unjustifiable discrimination between countries where identical or similar conditions prevail, and the application of measures in a manner that constitutes a "disguised restriction on international trade." (SPS Agreement at paragraph 7.) This might permit challenges to a food safety measure on the ground that its underlying effect is to restrict trade. For example, a ban on listeria in cheese, which is only imported, while listeria is not banned in other products, might be viewed as a hidden trade restriction.

²⁶ TBT Agreement at paragraphs 2.4, 5.4.

²⁷ Id. at paragraph 2.4.

²⁸ Id. at Annex 3, paragraph F.

²⁹ SPS Agreement at paragraphs 6, 16-17.

³⁰ Report on United States Barriers to Trade and Investment: 1994, Services of the European Commission, p. 56 and p. 77.

9/12/94; OMB Acting Director Alice M. Rivlin's letter to Senator Russell D. Feingold, 8/8/94; "WTO Means Rule by Unaccountable Tribunals," Ralph Nader, Wall Street Journal, 8/17/94; "U.S. Now a Target of More GATT Trade Challenges Than It Initiates," Andrew Wheat, GATT Project; Harvard Law Professor Richard D. Parker's letter to Senator Robert Byrd, 8/9/94; Ralph Nader, Lori Wallach letter to USTR Mickey Kantor, 8/3/94; and "Nader Challenger Gore To Debate World Trade Pact," 7/5/94 may be found in the committee files.]

The CHAIRMAN. You mentioned, Mr. Nader, the knee-jerk editorials which prompts me to state for the record that we will have a hearing on the pioneer preference. I hoped to have that tomorrow but several committee members said they wanted to be here and could not prior to the election, so we will have a hearing on the pioneer preferences in November. And they are not only, the editorials that you talk about, knee-jerk, but they are hypocritical.

The Washington Post called me self-indulgent. Here is a crowd that is reaping millions from the agreement. I have ruined a vacation to try to discuss a serious issue and expose this agreement which will be terribly damaging. And the Post who will receive the millions under this no-amendment, fast-track GATT procedure are calling me self-indulgent. It just makes you want to hit the roof.

Specifically, Ms. Reade, I was a little nonplussed because you are an outstanding lawyer, and rather than talk about the law you were talking about the United States politically. "The United States," you said, "is not afraid. The United States believes in these rules."

You really believe as described, and it is accurate in its description, it is secret, it is a kangaroo court. The composition under any American bar proceeding and consideration would never let people with a conflict of interest serve on those panels, yet they can serve on the panels, and operate in secrecy, and with no open depositions, and you cannot find out how they voted after they vote.

I have yet to describe this. People are aghast, not just frightened. They just cannot believe the Government in Washington is that unreliable. And yet you say they are not afraid. They believe in this dispute settlement, and this WTO.

Ms. READE. Chairman Hollings, it is definitely the case that the American Bar Association as lawyers, and based on our legal tradition in the United States, prefers more openness and that more openness would be desirable. At the same time, we have to remember where we are coming from.

The existing GATT is not open at all, and there are changes that have been made in this dispute settlement agreement that do increase the openness and access.

The CHAIRMAN. Is there a secret operation under GATT, when you say it is not open? Is there anything to compare with the secrecy of the WTO in Geneva?

Ms. READE. Well yes, in fact, there is. Let us look at where these proceedings are coming from. We have to remember the fact that it is countries dealing with countries, and the fact that the main purpose of GATT dispute settlement is to try to encourage negotiated settlement.

The CHAIRMAN. But where is the secrecy?

Ms. READE. Well, that is my point: there are some who believe that negotiated settlement occurs best when there is some privacy as opposed to being under the glare of the spotlight. And if you

think about, for example, Israel and Syria, they would have a hard time negotiating if they were on Court TV.

Furthermore, put briefly, there is a diplomatic element that we need to be aware of in trying to move countries toward the processes and procedures that we in the United States have used in our courts. And let me say that if we did not adopt the dispute settlement understanding, we would go backward, not forward. There are changes that the United States has pressed for, and changes that the United States will continue to press for in terms of increased transparency.

A final point here is that under the implementing legislation the United States is explicitly going to be including States in any panel proceedings where a State law has been raised. So, there is a complete right for the States to participate in those proceedings.

The CHAIRMAN. Well, emphasizing further that we believe in the rules, that we will continue as you say to operate by consensus basis, do you not realize that more than three-quarters of the composition of GATT; namely the 117 countries, have voted against the United States in a majority of instances in the United Nations? I mean, that is the track record, but that does not frighten you, I take it.

Ms. READE. Well, that is a very good point. If you look at the difference between the kinds of votes that are taken in the United Nations General Assembly which operates, as some have said, as a political body, and the record of the GATT for the last numbers of decades where those same nations have used consensus, you see that the kinds of decisions that are made under the GATT, which are the same kinds of decisions that the WTO would be making, have not been adverse to U.S. interests by any means.

The CHAIRMAN. Well, maybe as a lawyer you can find the veto power that we yearn for and absolutely require. You mentioned Israel. There would be no Israel without the veto that we have had in the United Nations, I think we will all agree.

Do you find a veto power in this instrument?

Ms. READE. I think that there is a very unusual form of veto power in this instrument that is not a formal, procedural, written down in legalistic form veto, but is a very practical veto that has in fact stood the test of time for more than three decades. And that is precisely the GATT tradition that the WTO explicitly states will continue—this consensus.

Now I realize that consensus—

The CHAIRMAN. Where then is consensus a veto?

Ms. READE. Well, my point is a consensus means that no decision will be taken unless all of the members who are present and voting agree to it.

The CHAIRMAN. Well, why do they have the voting procedure of one-man-one-vote?

Ms. READE. That is a very good question. It is the same reason probably that the GATT 47 had that voting procedure. GATT 47 had voting procedures. They were never used.

The CHAIRMAN. Because they never were approved—47 never was given the formality of law.

Ms. READE. Well, the International Trade Organization, which was the powerful international organization, was never approved,

but the GATT certainly was, and the GATT had procedural rules that are written in the GATT. They mostly use majority voting, frankly, if you look at the articles of the GATT 47.

Now, as a fall-back mechanism in the WTO, in case this long-standing practice of consensus were to fail, the U.S. Government did increase the technical voting protections under the WTO voting rules. No one expects that these voting rules will be invoked. They expect that consensus will continue to be the procedures used in the WTO, just as they have been in the GATT.

But if they were to be used, there are protections for the United States that exceed the protections offered to the United States procedurally under the procedural rules of the existing GATT in terms of voting.

Mr. NADER. I would like to comment on that.

The CHAIRMAN. Please.

Mr. NADER. The existing GATT was basically a toothless agreement. It rested entirely on consensus. The United States could thumb its nose at adverse tribunal decisions and others could too, as it did under the Mexican tuna-dolphin decision against our mammal protection law.

We are dealing here with a much more powerful successor to the current GATT, one that has enforcement teeth, one that cannot be vetoed by a losing country before these tribunals, one that ranged far broader into intellectual property and agriculture and harmonization procedures.

You know, to describe old GATT similar to new GATT is like saying that a pussycat is equal to a saber-tooth tiger. This is a much more powerful organization.

Now, I want to point out that this consensus point that Ms. Reade is making is an interesting one for a lawyer to make, because what she is really saying is that it will never happen. It could happen. That is, we could be out voted, but it has not happened in the past.

Well, we did not have a structure in the past. The U.S. Congress did not agree to that structure. There was not really a voting tradition or much of a capability in the current GATT.

But notice this continual abbreviation on the consensus. This happened when Rufus Yerxa testified. It happens when Kantor testifies. They say, "Folks, do not worry, the new GATT operates on consensus."

And the statement goes like this, "this is the USTR representative. The statement is from Rufus Yerxa. In fact, article 9 of the WTO agreement codifies what was merely a custom in the GATT. It makes consensus the governing principle for WTO for decision-making."

And it is getting to be a routine. I follow him on the witness list and I say, "Rufus, you are not finishing the sentence. And the way to finish the sentence is, the WTO shall continue the practice of decisionmaking by consensus followed under the GATT except as otherwise provided. Where a decision cannot be arrived at by consensus, the matter at issue will be decided by voting. Each member of the WTO shall have one vote."

Now, you know, when you cannot argue the law you argue the custom. I do not mind arguing the political reality of power, but it

is pretty hard to argue a custom that is against the overriding, powerful thrust behind this organization which is an escape from U.S. jurisdiction and laws to the maximum extent possible under a suprainternational autocratic regime that totally contradicts our traditions, our laws, and our customs in the last 100 years.

The CHAIRMAN. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. Thank you both for being here. I would hope, Mr. Nader, that you would cease and desist from preempting Senators who were about ready to ask a question based upon the quote that you just made, which is totally accurate. I say that facetiously.

I am going to ask you the question anyway. I have before me the Uruguay Round. Final text of the GATT, Uruguay Round agreements, including agreement establishing the World Trade Organization.

You know and I know, and it was testified to by many here, this is that secret organization that is going to make these decisions that you say, Ms. Reade, is just a continuation of the consensus building system that we have had under GATT.

I am reading from this document, which we are going to vote on, page 13, article 9, decisionmaking. I am going to read again what Mr. Nader just said, and ask you if you can possibly, as a highly qualified lawyer representing the American Bar Association in good conscience explain to us how you can make the statements that you make in this regard, especially after hearing Dr. Tribe this morning, who said it was hogwash. And he is a pretty respected lawyer in his own right.

Page 13, article 9, (1), "the World Trade Organization shall continue the practice of decisionmaking by consensus"—I guess that is where you got it—"under GATT 1947 except as otherwise provided. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting."

"At meetings of the ministerial conference and the general council, each member of the World Trade Organization shall have one vote."

Please explain that to me. I am not a lawyer and I do not understand it. Maybe you understand it in some fashion that I do not, but I would like your explanation.

Ms. READE. Well, Senator, the GATT organization and the practices that it has followed have become very much ingrained in how GATT has proceeded, which means that countries, although they had voting rules that were parallel to the ones you read, not as protective for the United States, but parallel, for more than 35 years they have never once used them.

And practice has developed in that way because countries have understood the best way to make international economic decisions.

Senator EXON. I will tell you why they did not use them, and you know this very well. Under the old GATT rules, if they had tried to use them, we can walk away. Under these rules we cannot. Do you agree with that?

Ms. READE. Well, I think we have to distinguish between the proceedings of the WTO in general, OK, which is what we are talking about with article 9, and I think you may be referring to dispute

settlement which has a different set of proceedings. I understand it is confusing.

Senator EXON. I do not mean to be sharp with the witness, but I am so weary of hearing people come and refute what is in the treaty.

Let me ask you a question, Mr. Nader. Mr. Nader, are you worried about the food safety under the GATT agreement? Is American grown food by and large safer than food grown elsewhere? Is imported food in your opinion inspected properly, and will it be if this agreement becomes law?

Mr. NADER. Our food standards are stronger than the international Codex Alimentarius standards based in Rome. They are certainly stronger than most countries around the world, their own food safety laws.

The U.S. Customs is grossly underinspecting food imports. They can barely handle less than 1 percent, and we are very concerned about this.

Not only that, but the food safety standards under the World Trade Organization have to be read very carefully in order to make sure that they do not falsely reassure consumers.

State bans or Federal bans on hormones, for example, in cows, the BST situation, the irradiated food situation, those would not be considered scientifically based by the World Trade Organization, and the definition of "science" largely is corporate science. These advisory committees to the Codex International are scientists working for the international food companies.

So, I think the American people are entitled to be quite concerned that our food safety standards will be degraded.

Senator EXON. I just have one more question that I would like to ask both of our witnesses, and ask if they can give as short a reply as possible. I know they have waited a long, long time and we appreciate that. It has to do with trade and diplomacy that has been touched on to one degree or another.

Trade has long been, I think we would agree, a means of diplomacy. The United States has an embargo at the present time on Iraq and Cuba and North Korea. It has used the most-favored-nation trade status to encourage several countries, including China, Romania, and Russia to protect human rights.

Would the GATT agreement "least-trade restrictive" language prevent the United States from using trade sanctions to further U.S. foreign policy and human rights around the world when dealing with a so-called member country, under the Uruguay Round-GATT agreement?

Mr. NADER. There is a national security exemption, so within the definition of "national security," which will be judged by three trade specialists in Geneva, countries can use these trade embargoes against one another.

Outside the national security umbrella, and China, for example, would clearly be outside the national security umbrella in their present human rights posture, there is a rupture. It is considered impermissible unilateralism for the United States to tell China that they are going to curtail trade or restrict their imports into this country of textiles or whatever unless they improve their human rights.

The problem is that trade specialists do not know much about human rights, Senator EXON. Trade specialists do not know much about consumer, environmental, worker, and yet they are sitting there in secret presiding.

Senator EXON. And child labor laws.

Mr. NADER. And child labor laws. And I think the American people, as they get ready to communicate to their Members of Congress on the upcoming vote on this upcoming World Trade Organization agreement in late November in the House and early December in the Senate, would do well to ask their Senators and Representatives to send them if not this entire volume the first 12 pages or so that describe the World Trade Organization and how its powers will be laid over our democratic society in this country.

Senator EXON. Ms. Reade, how do you respond to my question?

Ms. READE. Well, looking at this "least-trade restrictive" standard, I think that, again, you have to read the whole sentence. It says that you cannot "pose an unnecessary obstacle to trade given the legitimate objective that you are trying to pursue." And those legitimate objectives include a number of issues including the environment, product safety, and the like.

So, it is important to understand that these standards are not trade über alles as Mr. Nader has portrayed them.

Mr. NADER. Except that the linguistic specialists who wrote this agreement were very clever in paying lipservice to these nontrade issues, but then in other parts of the agreement they subordinate them under impermissible unilateralism, that's the human rights issue; under process standards that cannot be imposed, say child labor, the way a product is manufactured; under the least restrictive trade issue; under the harmonization mandate.

You really have to read this in its totality. And it is quite clear that trade and commerce won out against democracy, and health and safety.

Senator EXON. Thank you, folks, and thank you, Mr. Chairman.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much, and I appreciate the statements of both of the witnesses.

Mr. Nader, I do not share your view of Ambassador Kantor, although I share your passion about this issue. He does not need a great deal of defense, but I would just observe that after years of disputes he finally took action against Canada. He has really engaged Japan in a way that they have not been engaged in previous administrations.

So, I simply want to observe that while I have significant disagreements with Ambassador Kantor, I think he is the first Trade Ambassador who has really aggressively moved in several areas to address some chronic trade problems.

If the witnesses and the chairman will allow me just to make a couple of observations and then ask some questions.

We have been discussing this morning the constitutional issues, WTO and dispute settlements, sovereignty issues, secrecy issues, and all of those I think are important and all of them will contribute to answering the question of how will Members of the Senate vote on this issue of the GATT agreement, the Uruguay Round.

I, however, think the most important element of this discussion is that our current trade policy, which this agreement advances in a quantum leap, is fundamentally flawed and fundamentally undercuts this country's ability to progress.

This is, in my judgment, fundamentally unsound economic policy for this country. And, after all, the job of all of us is to try to evaluate what will further the economic interests of the United States of America.

We do not wear any other jerseys. I sometimes wonder which jerseys our trade negotiators have been wearing because they seldom ever go win a trade debate any place in the world. They tend to lose it quickly.

But we do not wear any jersey except the United States, and the fundamental question is what is going to advance the economic interests of our country?

Now this has been advertised widely, Mr. Chairman, as a tax cut for the American consumer. The only conceivable way it can be a tax cut for the American consumer is if you believe that reducing tariffs and, therefore, making goods that are imported into this country cheaper for the American consumer is the equivalent of a tax cut, you can make that argument.

But the extension of that argument is that we are much more concerned about consumption than we are production. And that, after all, is I think the dilemma of this agreement.

A country that decides consumption is more important than production, consumption is a more important measurement of economic health than production is not a country that is going to do very well in the long term. Production is the product of labor and capital from which all other income and wealth originate—production, not consumption.

Now, we have a \$140 billion trade deficit and we are heading toward the second worst trade deficit in American history, about \$140 billion. And unlike the Federal deficit where you can make a case, even though it is unequally distributed, that we are going to pay ourselves, the Federal budget deficit, the trade deficit will be and must be some day reconciled with a lower standard of living in the United States in order to pay off that deficit.

Now, the question that has been raised with everyone is, should we not be required to compete? Should not America be required and obligated to compete? And the answer is "Yes," obviously. The question is "With whom?"

Should we ask the American worker to compete with those who make 25 cents an hour, 50 cents an hour with no worker safety provisions? Is that fair competition? Is that the kind of competition we expect and want the American workers to engage in? If the answer is "Yes," the question then is "Why?"

The answer to the question why I think is something that Mr. Nader touched on. I think it is under the guise of the global economy, and the profit and the greed that exists in the globalization of our economy. And by those who are producers and decide they are not economic nationalists, they are international economic producers who circle the globe and decide they want to produce where it is the cheapest in the world to produce and sell it in the world's markets where they can reap the most benefit.

And that, in my judgment, is a fundamental disconnect in which you produce or you no longer generate the stream of income with which consumers will eventually consume the production. And that, I think, is the underpinnings of why I think this is such a terrible agreement.

There is an old saying that when you find yourself in a hole, it is time to stop digging. In this case the current trade policy has been digging this country a significant, enormous hole, and the remedy under the expanded GATT, under the Uruguay Round, is to distribute more shovels and ask that we dig faster. It is fundamentally unsound.

We will, I think, lead to lower income for most American workers as a result of this agreement. And we will also every day and in every way affect the lives and the economic health of those who work, those who have jobs, those who produce, and I could go on and describe the specifics of that.

The CHAIRMAN. Senator, would you yield there because this is so timely. The present issue, this week's issue of Time Magazine, "Boom for Whom." The article entitled, "We're Number One and It Hurts." You could have written this article, I could have written this article, on the present GATT, talking about when you are in a hole stop digging.

We all hear about high technology. Reading from that article Japan still dominates many high-technology fields. We all hear about exports. Exports, exports, exports, jobs. Quoting from the article, "though exports are now among the fastest growing items in the U.S. economy they are still running well behind imports resulting in a gargantuan, growing trade deficit."

Talking about how the jobs have been created "in 1993 the top 100 U.S. electronics jobs eliminated 480,000 jobs." Quoting from the head of the American Electronics Association, "the American lifestyle is supported by manufacturing jobs. They are the entry point into the middle class for women and minorities and anyone else climbing the ladder who does not have the contacts or education to become a software engineer. These people cannot live a middle class life in the service jobs that are left over."

The article continues: "There is much evidence in fact that the United States is developing something of a two-tiered society. While corporate profits and executive salaries are rising rapidly, real wages are not growing at all. Indeed, the Government has reported that last year real median household income in the U.S. fell by \$312, while a million more people slipped into poverty."

On and on. I just had to put that in the record because that is what we have got under the present GATT, and we are just continuing to dig even deeper with not just now the Tokyo Round but the Uruguay Round.

I apologize, but I had to put that in. Everybody ought to read that article.

Senator DORGAN. Let me make one other comment. It is surprising to me that this debate is not a debate that really fills up Pennsylvania Avenue with hundreds of thousands of Americans marching in this town on this question, demanding answers from those who are about to vote on it, a trade agreement that will so profoundly affect their future.

Trade affects the American people everyday in ways that affect their lifestyle and their standard of living. Let me give you one example, Mr. Chairman, of trade.

We had a circumstance where Canada was subsidizing hogs, the production of hogs, clearly subsidizing, not really any debate about that, and then moving the hogs down across our border in trucks. And those hogs would come squealing across the Canadian-U.S. border, and headed south to be processed into pork chops or ham or bacon.

Well, a complaint was filed and it was determined, yes, in fact those hogs were subsidized and they would have to stop sending those hogs to the United States, and they did. What they did is they butchered those hogs in Canada and sent ham to the United States. And the ham did not squeal when it came across the border because its squealing days were over.

And most people understand that a hog is a ham just traveling in a different form. Trade law does not understand that, and trade law said, "Well, it is true we have a countervailing duty against live hogs but not against pork products," that is, ham or bacon.

And that is why people who produce, they scratch their heads and say, "What in the hell is going on?" I mean, anybody who thinks, who completes the first or second grade understands that a hog is a ham, but trade law does not understand it.

And that is what erodes the confidence in trade law, and the agreements, and dispute settlements, and the interpretations.

Mr. NADER. What is going on, if I may just interject, Senator, is that over the last 15 years our trade policy and expanded trade principles have led to the biggest trade deficits in American history, which means we are exporting jobs. And this year the projection is a \$160 billion trade deficit even though the dollar is cheap. What in the world is going to happen if the reverse occurs?

We have to ask ourselves quite seriously whether the projections for this World Trade Organization agreement have any basis in fact.

In my annex I list estimates of the benefits of this World Trade Organization agreement by four institutions that favor it. The U.S. Trade Representative says it is \$1 trillion estimated gross national product gains from GATT over 10 years for the U.S.A.—\$1 trillion.

The Organization for Economic Cooperation and Development in Europe, OECD, has it down to \$160 billion for 10 years total.

The Institute for International Economics down the street, pro-GATT, it is down to \$42 billion. And the Economic Policy Institute, which may be critical of GATT but not totally opposed, is down to \$7 billion.

And the International Trade Commission has much lower figures about the so-called benefits to the United States of the World Trade Organization agreement than Mr. Kantor. And yesterday before a business group Mr. Kantor totally dismissed the International Trade Commission work.

He may be OK vis-a-vis Japan and Canada, Senator, but my comments are restricted to his focus on the World Trade Organization.

Senator DORGAN. I would say that almost any estimate, including the most optimistic estimates of U.S. gain under this agree-

ment, are minuscule—are minuscule as compared to the international economy, as compared to the risks to the American people.

So, even those who advertise this as some nirvana are not able to show us documents that say, "Boy, this is the road that paves America's future." That is not what the benefits promise, but the risks are enormous.

I want to make two other comments and then ask you a couple of questions.

You mentioned newspapers. It is interesting to me not just that there are not one-half million people parading down this avenue on what is one of the most important economic issues facing this country in decades. It is also interesting that you cannot, in areas where one would expect free expression and aggressive debate, engage in that debate.

The Washington Post, although I shall not name them, the Los Angeles Times, the New York Times as an example—I have not counted the column interests in these three newspapers, but they are representative of the others as well. I did under NAFTA, but have not under GATT.

But you cannot have a good debate on their op-ed pages on this subject. They ran on NAFTA, I think, 5-to-1 in favor versus opposition. I mean, free trade is one thing. What about free expression and free competition of ideas? And I have not looked at GATT but I bet you will find the same thing.

The other thing that is interesting to me is that if you do not subscribe to this notion that expanded trade somehow represents our country's future, then you are portrayed as part of the small minded versus the big thinkers, and we are in the small-minded category. There is a competition between those who are small minded and cannot think globally, and those who are big thinkers and think strategically, which I find interesting.

Mr. NADER. Part of this is an ideological catechism that is taught in economics 101. Empirically starved economics still lunching off David Ricardo and Portuguese wine for British textiles in the early 19th century.

This is not just about trade. It is about the movement of factories abroad with brand new equipment and 20-cent-an-hour labor, well-trained, coming back with the products into our country. This is not about a product that only Ecuador can produce and we cannot, and vice versa. It is a whole new ballgame out there.

And the Bart Rowans, and the editorial writers, and others who just continue their party line here and belittle critics just ought to expose themselves to the reality in the world here. And the reality is that this trade agreement is driven by the mission of global corporations to pit one country against another in order to get the lowest cost, the most permissive laws, and the least restraints on what they want to do.

All you have to do is look at the auto companies in Michigan, and the same auto companies in the maquiladoras across the border to see how they have to treat workers in the environment in Michigan compared to their poisoning of the environment and mistreating of the workers and colluding with the one-party dictatorship there to obstruct trade unionism.

Senator DORGAN. Ms. Reade, this agreement, according to Mr. Nader, is wonderful for lawyers. He indicates the bar association's position really represents the economic interest of lawyers in this country. Your response?

Ms. READE. I think the American Bar Association's position here represents analysis and sense of principle, and does not reflect an economic interest in this. I can attest to that in this case.

Senator DORGAN. But you certainly would not come here representing a position that is foreign to the economic interest of attorneys, I would assume. I mean, the bar association is an association of lawyers interested in the future of lawyers, one would expect.

Ms. READE. If one looks at the breadth of the GATT agreements on standards, and on intellectual property, and on financial services, and on agreements on trade in goods, I think it would be quite egotistical to believe that lawyers were even considered as marginal beneficiaries of the agreement.

Senator DORGAN. You are saying the dispute settlement is more certain in this Uruguay Round agreement, which is one of the reasons that you think it probably is advantageous if dispute settlement is more certain, and if, as the chairman and others have pointed out, that it will be one of the few instances in which we do not have some capability of exercising some strength based upon who we are versus who other countries are, population, economy, one of the few instances where we do not have a veto power, for example.

Would not your description of its strength really represent a weakness from the standpoint of the United States?

Ms. READE. As a lawyer, I am a person who believes the rule of law is better than the rule of other approaches, OK. I believe that the United States, which pressed very strongly for these reforms, made a calculation that it was in its interest because it wanted other countries to adhere to these rules, and it was not afraid of adhering to these rules itself.

Mr. NADER. I just want to make a point here. This illustrates, you see, if consensus ruled, then the United States could have objected by itself to these secret procedures, but what Mickey Kantor really did was, he counted the votes, and he knew he could not get a deal because other nations, which are either dictatorships or parliamentary systems, do not have this tradition of openness that we do.

And that is what I keep mentioning to his people, is that while he keeps saying, "we are never going to be outvoted, we are too big," et cetera, he in effect recognized that the United States was outvoted when he said he could not go for due process because he could not have gotten a deal.

Senator DORGAN. Mr. Chairman, two additional questions, and I appreciate your indulgence.

Mr. Nader raised—I think it was Mr. Nader raised a point that I was unaware of, and I would like the staff to see if we could get some additional information on the point.

Mr. Nader raised the point that since we have joined the GATT organization, in these intervening years more complaints have been filed against us than we filing complaints against others.

Mr. NADER. Starting in 1980, and the data is in my annex.

Senator DORGAN. So, in the last 14 years, you are saying that—

Mr. NADER. The tide has turned.

Senator DORGAN. Do you have any information about prior to that time?

Mr. NADER. It was the reverse. We had a little more than—we were plaintiffs more than defendants.

Senator DORGAN. One would expect, if largely the problem in trade is that so many other markets are closed to our producers—our market is pretty much wide open to a vast array of other products, and we find so many other markets closed to us, that if that is the case, one would expect us to have been much more aggressive under GATT in using GATT to pry open markets that were improperly closed. Why do you think that has not been the case in the last 14 years?

Mr. NADER. That is a hard question to answer. I mean, the facile answer is that we are patsies when it comes to these issues. I suppose one answer would be that we did not think it would make much difference because we could not make it stick. The other country could just ignore it.

Senator DORGAN. And Ms. Reade says, then, that if the WTO in the future can make it stick—

Mr. NADER. There will be more challenges to the United States in the nontariff trade barrier area, because we have more protective health, safety, and other legislation than many other countries.

Senator DORGAN. Would we, then, under the WTO, also be able to initiate more challenges and probably be more successful?

Mr. NADER. Possibly, yes, but in the economic area primarily, except that we will not be able to use 301. We will have to go through the regular WTO tribunal procedures, or negotiate privately.

Senator DORGAN. One of the things I have found about the U.S.-Canada trade dispute was that I think it was a *prima facie* case of them targeting our market with unfairly subsidized grain, and we just could not do much about it. I mean, we tried and tried and tried. Finally, the threat of a section 22 is what resulted, now, in a 1-year agreement.

Section 22 is going to be gone. It is obliterated by this agreement, and so the very club that is used, the only effective club that is used as an instrument to get an agreement, albeit a short one, with Canada, is traded away in this area.

Let me ask one final question, and you may not know the answer to this, but we are told that if we do not pass legislation implementing this GATT agreement it will be destabilizing. The professor mentioned the word today, and others are using it, and whenever I ask what that means, they always talk about, gee, Wall Street. The stock market or the bond market.

And these markets, incidentally, remind me a little of a horse I had with wild eyes when I was a kid, and the very least movement from any side would move this horse off as quickly as he could. He would just shy away from everything. That is sort of what the markets remind me of these days. They run in any unpredictable direction at the least provocation.

Do you think, having watched the stock and the bond markets, that the failure to embrace this GATT agreement would truly be destabilizing?

Mr. NADER. Well, hysteria has no rational basis. It is not foreign to these markets, Senator, but I think they are using the so-called destabilization of markets as a ploy to destabilize the Senate and the House and scare the legislators into quickly approving this.

There was an article in the Wall Street Journal about 6 or 7 weeks ago saying, market jitters due to GATT uncertainties, but when the market shot up, there was no headline that said, market restabilizing due to GATT likely to be approved at another time.

Senator DORGAN. Compared to the stock and bond markets, this is the Rock of Gibraltar here in the Senate.

But I agree with you that we seek explanations after the markets have moved, often explanations that are not wholly rational.

Mr. NADER. And also, we have existing GATT. I mean, if this GATT does not get approved, the existing GATT continues. It has been expanding world trade.

The key is, you can have world trade and investment without having world autocracy, without driving down living standards in more advanced countries, without allowing other countries to do whatever they want to their people, and still reap the benefits of our market. We really have to be more humane and less specialized about all of this.

I might add, Bruce Wilson, who is the general counsel to the House Ways and Means Committee, he knows all these freebies and all these benefits, and it has been quite hard getting out of his office a list of all these benefits. I do not know whether you can get it out of the Finance Committee, but that is really important.

And the other thing is, the more the media reports this, the more the American people will make this judgment for you. When the veterans organizations of this country, the American Legion and the VFW and others, learn about this and start thinking about this, and start raising the issues of sovereignty and raising the issues of self-determination and democracy—what did they all fight for? This is an international regime that does not immediately have its oppressive effect to its total magnitude, but it will grow and expand in that direction, because it fulfills the global corporate power strategy of pitting one country against another.

Senator DORGAN. Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator Dorgan.

Ms. Reade, thank you very much. Thank you, Mr. Nader.

[The committee will be in recess subject to the call.]

S. 2467, GATT IMPLEMENTING LEGISLATION

MONDAY, NOVEMBER 14, 1994

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. The committee will come to order.

It seems to me that what we are mainly interested in at this particular hearing is the justification for the FCC's pioneer's preference program and the finding of innovative technology.

The FCC, as I understand, sets policy. That policy is not to be questioned. What is questioned, as I understand it, is whether or not the technology was innovative in the first instance, whether or not there was a promise that if the pioneers had the innovative technology then they would receive their licenses free of charge, and specifically whether section 801 is congressional interference in the proceedings at the FCC.

Well, at least this Senator, who has been on the committee a while, has never experienced congressional interference—and as I understand pioneer preferences are under appeal at the present time. But now the administration comes in with section 801 of the GATT legislation to say ipso facto, this is it, there is no amendment and there cannot be any judicial appeal of the FCC decision, which is a tentative decision, which interests me so we invited the FCC, and Commissioner Barrett, we welcome you here. I see you brought your lawyer.

Mr. BARRETT. Only one, Mr. Chairman.

The CHAIRMAN. And Mr. Sallet, are you with the FCC?

Mr. SALLET. No, sir, I am here representing the administration. I am with Secretary Brown's policy office. I am accompanied by John Koskinen, who is the Deputy Director for Management at OMB.

The CHAIRMAN. Well, good. We are glad to have the administration. Let me yield to Senator Pressler.

OPENING STATEMENT OF SENATOR PRESSLER

Senator PRESSLER. Mr. Chairman, I will not speak at length here, but to say that this is a kind of Washington insiders' hearing, but that the taxpayers of the country stand to spend several million, and maybe \$1 billion.

Also, this case has drawn a lot of controversy because after the Washington Post endorsed the GATT treaties it was discovered that it was their subsidiary that will get a large tax break, and that led to a great deal of controversy here in this city and throughout our country, I think.

Mr. Chairman, I, like you and many of our colleagues, have been deeply distressed by the numerous reports of the so-called billion dollar giveaway to the Washington Post that was reportedly negotiated in secret by a select few Members of Congress in the Clinton administration for inclusion in the GATT implementing legislation.

Not surprisingly, what appeared to be at first blush yet another outrageous example of Washington run amok turns out to be a much more complex and convoluted story line characterized by a Byzantine and Machiavellian series of twists and turns, flips and flops, promises made and broken.

I greatly appreciate having an opportunity to get to the bottom of this rather incredible story, to explore why the FCC originally adopted its pioneer preference policy, and whether that policy has worked, to discover why and under what circumstances the FCC subsequently did a dramatic about-face and reversed its earlier decision to award PCS licenses to the pioneer "for free," to determine who in Congress, the Clinton administration, and private industry were involved in the negotiations leading to yet another formula for calculating what the pioneers would have to pay for their PCS licenses, to examine what kind of market distortion and auction process dislocation might occur, to determine whether the motivation of these parties challenging the pioneer program is simply designed to hold off new wireless competition, and to penetrate the numbers game on each side of this controversy to answer the central question in the debate, what is the true value of each wireless license, and is this a fair deal for American taxpayers.

Mr. Chairman, I thank you for holding this hearing, and say that you have always operated in a very fair and balanced way, and I think that these hearings have been very stimulating, and I thank you very, very much.

I believe we now have most of the pertinent parties here, unless we hear something new, and I think the American taxpayers deserve to find out what happened here, because they are the ones who have to pay the bill, and I thank you very much, Mr. Chairman. You have always been—let me also say that you have—I think this is—you are getting toward the last one of the hearings you are going to chair here for a while according to the newspapers, at least. I do not know who is going to chair them after this, but you have been a good chairman.

The CHAIRMAN. Thank you very much, Senator Pressler.

Actually, Senator Conrad Burns asked that we hold this hearing and to delay it until after the election. Prior to the election, we were ready to finish out the series at that particular time. Of

course, he was busily engaged in the campaign, and we were glad to delay it until this morning. Senator Packwood.

OPENING STATEMENT OF SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, there is one particular thing I wish the witnesses would address, and that is the likelihood of the FCC losing the suit, because if the companies that are bringing the suit are likely to win, the Government gets nothing, and all good lawyers understand negotiations and settlements, and especially when it is an iffy legal proposition.

I do not, on occasion, mind rolling the dice on all or nothing where I think the odds are in my favor to win often enough to do better than break even. In this case, the law really, we have not even scratched the surface on the law.

The case is in the court of appeals. It is remanded back to the FCC, and we are kind of in murky waters. Too, I am a strong supporter of GATT. I am not sure the chairman and I agree on that. But then I am curious as to what happens in terms of GATT if this issue is not settled. We need the money for implementing GATT.

So, if the witnesses would address themselves to that, I am reasonably familiar with the court action and the remand, but I would like your judgment as to what you think is going to happen.

The CHAIRMAN. Let me make it clear that, as long as I have been on the committee, we have never had a request that whereas the case would be questionable, or that the Commission itself might lose on appeal, that we as a Congress inject ourselves and categorically write a legal decision, period, and that there be no appeal therefrom.

I do not think that the Congress should be engaged in that conduct, and if the parties win their suit, they deserve to win their suit on the law, and I, for one, would never engage in changing the law so to make sure that the Government could win a suit. I am still for the individuals, as I see it.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, I will have some comments at the start of tomorrow morning's hearings, but I will defer today, and would be anxious to hear the witnesses.

Senator PACKWOOD. Mr. Chairman, I can give you one where we changed the law so the Government would not lose the suit, and that is when we built the Alaska Pipeline. It was subject to the Environmental Protection Act, and the act had been passed.

The pipeline obviously goes through all Federal land, almost, in Alaska, and when we passed the Alaska Pipeline bill we just said—I am paraphrasing it—by the passage of this act we hereby declare that the provisions of the Environmental Act are met, and that ended any lawsuits. It ended them in favor of the Government, because the Government wanted to build the pipeline.

The CHAIRMAN. I understand. I am talking about the Federal Communications Commission, because they are subject to suit and subject to appeal, and this committee was not engaged in the pipeline. Commissioner Barrett.

**STATEMENT OF HON. ANDREW BARRETT, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED
BY GENERAL COUNSEL KENNARD**

Mr. BARRETT. Mr. Chairman, first of all, let me say that it is always a pleasure to visit with you, and because I am the only Commissioner here, we have chosen to have our General Counsel make a statement for the Commission, and we do that, Mr. Chairman, only because my views may not necessarily represent the Commission's overall, but I certainly think that the General Counsel can do a good job of that.

We certainly want to stay away from—Mr. Chairman, we had nothing to do with GATT. Certainly we do not want to get into a discussion of the merits of GATT, because we had nothing to do with GATT, as it stands.

Mr. Kennard.

Mr. KENNARD. Thank you. Thank you for the opportunity to appear before you today to discuss the pioneer preference program.

The CHAIRMAN. Wait a minute, Mr. Kennard. I just wanted to hear from Mr. Barrett. I take it you can advise him, but we want to hear what the Commission did from Mr. Barrett's point of view. That is what we requested. Commissioner Barrett, do you have a further statement?

Mr. BARRETT. No. I will answer any questions, Mr. Chairman. I do not have any statements, but I would certainly be pleased to answer any questions.

The CHAIRMAN. Very good.

[The prepared statement of Mr. Kennard follows:]

**PREPARED STATEMENT OF WILLIAM E. KENNARD, GENERAL COUNSEL, FEDERAL
COMMUNICATIONS COMMISSION**

Thank you, Mr. Chairman, and members of the Committee. It is my pleasure to come before you today to discuss the Federal Communications Commission's pioneer's preference program.

My statement outlines the Commission's pioneer's preference rules and how they have been applied. I should convey at the outset that petitions to reconsider the decisions whether to grant or deny various pioneer's preferences involving broadband personal communications services (PCS), as well as petitions to deny the license applications of the broadband pioneers, are currently pending before the Commission. These adjudication proceedings are considered restricted under the Commission's ex parte rules. Also, as you are aware, Mr. Chairman, the PBS pioneer's preference awards and the Commission's decisions to charge the pioneers for their licenses are the subject of pending litigation in the U.S. Court of Appeals for the D.C. Circuit. As I am sure you can understand, under these circumstances I am therefore limited in the degree to which I can comment on the issues beyond explaining what the Commission decided in its previous decisions and the basis for those decisions. Chairman Hundt and Commissioner Chong have recused themselves from all matters related to the award of pioneer's preferences in broadband PCS.

In April 1990, in response to a Petition for Rule Making submitted by the Washington Center for Public Policy Research, headed by former FCC General Counsel Henry Geller, the Commission proposed rules that would reward parties for their innovative proposals for new spectrum-based services.¹ The Commission under the leadership of then-Chairman Al Sikes, was concerned that entrepreneurs who make significant strides in technology and take substantial risks associated with the development of new radio services and technologies were being denied the opportunity to obtain licenses for the spectrum necessary to develop and implement new services, particularly under the lottery process used for assigning licenses for most new spectrum-based services. The Commission observed that innovators of new services must spend a considerable amount of time and money to develop new communica-

¹ See Notice of Proposed Rule Making, Gen. Docket No. 90-217, 5 FCC Rcd 2766 (1990).

tions services and advanced technologies, and that entrepreneurs were hesitant to make such investments absent the assurance that they would be able to have access to the spectrum needed to provide the new service and, thus, recoup their investments.

The Commission adopted its pioneer's preference rules in April, 1991.² The Commission was persuaded that a significant "reward" should be given to induce innovators to present their pioneering proposals to the Commission in a timely manner. Under the rules, which are codified in the Code of Federal Regulations, an otherwise-qualified recipient of a pioneer's preference may apply for and receive a license without facing competing, mutually exclusive applications for the same license. At the same time, the Commission took steps to encourage competition in communications services. It ensured that granting such preferences would not exclude others who also wish to provide the new services. The Commission also indicated that it would not grant a preference for more than one licensed service area and that preference recipients would not receive a formal head start over other licensees.

The Commission also concluded that, as a matter of communications policy, the pioneer's preferences serve the public interest in encouraging the development of new and innovative communications services, serving policy goals independent of the patent laws. The Commission determined that in many cases, the patent laws are not sufficient to promote innovative uses of the spectrum, principally because patents do not grant proprietary interests in creative new ways to provide broad-based radio services.

In adopting the pioneer's preference rules, the Commission emphasized that, "we do not intend to bestow preferences casually. An applicant for a pioneer's preference will have a significant burden to persuade the Commission that its proposal has sufficient merit." Specifically, under the rules, in order to qualify for a preference, an applicant must demonstrate "that it (or its predecessor-in-interest) has developed an innovative proposal that leads to the establishment of a service not currently provided or a substantial enhancement of an existing service." The Commission indicated that examples of a new or enhanced service might include those that provide added functionality, increased spectrum efficiency, increased speed or quality of information transfer, and reduced costs to the public.

In addition to meeting the "innovation" standard, the request must also include a demonstration of the new or enhanced service's technical feasibility, either through successful progress under an experimental license or through a technical showing. Also, the new service rules ultimately adopted by the Commission must be a "reasonable outgrowth" of the preference request and those rules must lend themselves to grant of a preference. If the proposal meets all of these requirements, the applicant is accorded a pioneer's preference. Assuming the applicant is otherwise qualified, the preference will effectively guarantee it a license to operate in the service.

The procedures for evaluating pioneer's preference requests allow for multiple opportunities for public scrutiny and technical analysis of each preference proposal. Interested parties may file pleadings against any preference request filed with the Commission. Then the Commission, after detailed technical review by its engineering staff, makes a "tentative decision on each request and invites further public comment. The merits of each separate request are then again fully evaluated by the Commission's engineering staff. The Commission makes its final decision based on the record and the staff's technical recommendations concerning each request. Since proceedings to award pioneer's preferences are considered "restricted" under the Commission's ex parte rules, no ex parte lobbying of Commissioners and FCC staff is permitted.

The Commission first applied its pioneer's preference rules in 1992, when it made a tentative determination to grant a preference to Volunteers in Technical Assistance (VITA), which was the first to develop and demonstrate the utility of small, low-earth orbit satellites in frequencies below 1 GHz (Little LEOs).³ When the Commission allocated spectrum for Little LEOs, it finalized the pioneer's preference award to VITA.⁴ Because there are no mutually exclusive applications in the Little LEO service, competitive bidding will not likely be used in awarding those licenses. In 1992, the Commission tentatively denied each of the pioneer's preference requests filed by five applicants proposing to establish LEO mobile satellite systems using

² See Report and Order, Gen. Docket No. 90-217, 6 FCC Rcd 3488 (1991), recon. granted in part, 7 FCC Rcd 1808 (1992), further recon. denied, 8 FCC Rcd 1659 (1993); 47 C.F.R. §§ 1.402-1.403, 5.207.

³ See Tentative Decision, ET Docket No. 91-280, 7 FCC Rcd 1625 (1992).

⁴ See Report and Order, ET Docket 91-280, 8 FCC Rcd 1812 (1993).

frequencies above 1 GHz (Big LEOs).⁵ The Commission was unable to discern any significant innovation in any of the five Big LEO proposals that would warrant a preference grant. In 1993, a tentative preference was granted to Suite 12 Group for its work in developing and proposing the local multipoint distribution service (LMDS) in the 28 GHz band.⁶ These two tentative decisions have not been finalized.

In 1992, in connection with the Commission's proposed allocation of spectrum for new personal communications services (PCS), the Commission received over 100 requests for pioneer's preferences. It granted a tentative pioneer's preference to four of these entities—Mobile Telecommunication Technologies Corporation (Mtel) for its innovative work in developing "narrowband" PCS technologies⁷ and to American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint) for their innovative efforts in the development of "broadband" PCS.⁸ The Commission denied 18 narrowband PCS preference requests and 47 broadband PCS preference requests on their merits and it dismissed 39 broadband preference requests for failing to provide basic information required by the rules.

In June 1993, the Commission granted a final preference to Mtel for a nationwide narrowband PCS license.⁹ The Commission found that Mtel had developed significant innovations for narrowband PCS that will permit delivery of existing paging services and new advanced paging and messaging services in a spectrum-efficient manner.

In August 1993, Congress enacted legislation that authorized the Commission to engage in competitive bidding for awarding spectrum licenses. In response, in October 1993, the Commission commenced a rulemaking proceeding to consider whether the pioneer's preference rules should be eliminated or modified in an environment of competitive bidding.¹⁰ The Commission noted that competitive bidding authority creates a new dynamic for the assignment of licenses and it was concerned that competitive bidding authority may have undermined the basis for the pioneer's preference rules. Unlike an applicant in the lottery context, an applicant bidding for a license who is an innovator could, through its bidding efforts, have substantial ability to control whether it obtains the desired license. The Commission also suggested that, under the new competitive bidding scheme, the value of innovation may be considered in the marketplace and measured by the ability to raise the funds necessary to obtain the desired licenses. Thus, the Commission solicited comment on whether competitive bidding permits innovative parties to have a reasonable expectation of obtaining licenses without the guarantee provided under current rules.

The Commission in that Notice of Proposed Rulemaking indicated that any change or elimination of the pioneer's preference rules would not apply to proceedings where decisions had already been made on the preferences, for example, the narrowband PCS proceeding in which Mtel was granted a preference. The Notice asked for comment on whether any change or elimination of the rules should apply to the broadband PCS proceeding and other proceedings where only tentative decisions had been made.

In December 1993, the Commission finalized the broadband PCS pioneer's preference awards to APC, Cox, and Omnipoint.¹¹ Based on the record and the technical evaluation by its engineering staff, the Commission found that APC had developed and demonstrated innovative technologies that facilitate spectrum sharing by new mobile PCS providers and incumbent fixed microwave systems in the 2 GHz spectrum band, permitting PCS to be implemented in the same band. Such sharing, the Commission found, will facilitate the rapid introduction of broadband PCS services to the public. The Commission concluded that APC's development was a significant innovation which warranted award of a pioneer's preference. It said that APC's discoveries and technical innovations changed the focus of attention from relocating the

⁵ See Notice of Proposed Rule Making and Tentative Decision, ET Docket No. 92-28, 7 FCC Rcd 6414 (1992).

⁶ See Notice of Proposed Rule Making, Order, Tentative Decision and Order on Reconsideration, CC Docket No. 92-297, 8 FCC Rcd 557 (1993).

⁷ See Notice of Proposed Rule Making and Tentative Decision, Gen. Docket No. 90-314 and ET Docket No. 92-100, 7 FCC Rcd 5676 (1992).

⁸ See Tentative Decision and Memorandum Opinion and Order, Gen. Docket No. 90-314, 7 FCC Rcd 7794 (1992), *aff'd sub nom. Adams Telecom, Inc. v. FCC*, Slip Op., No. 93-1103 (D.C. Cir. October 28, 1994).

⁹ First Report and Order, Gen. Docket No. 90-314 and ET Docket No. 92-100, 8 FCC Rcd 7162 (1993), appeal pending sub nom. *Bellsouth Corp. v. FCC*, No. 93-1518 (D.C. Cir. filed Aug. 20, 1993); on recon., Memorandum Opinion and Order, 9 FCC Rcd 1309 (1994).

¹⁰ Notice of Proposed Rule Making, ET Docket No. 93-266, 8 FCC Rcd 7692 (1993).

¹¹ See Third Report and Order, GEN Docket No. 90-314, 9 FCC Rcd 1337 (1994), recon. pending.

existing microwave licensees, which would delay the introduction of service, to frequency sharing, which allows for a smoother transition to PCS.

Cox was granted a preference for having developed and demonstrated the feasibility of innovatively using cable television facilities as part of the broadband PCS infrastructure. The Commission found that Cox was the first to use a cable television backbone for connecting PCS microcells by developing equipment capable of interfacing PCS microcells with copper, fiber, and hybrid copper/fiber cable plant, thus avoiding the need for additional "backhaul" spectrum. The Commission noted that this cost-effective integration of cable and PCS networks, in place of additional spectrum, was an important component in its decision not to allocate PCS support spectrum, as proposed by several parties.

Omnipoint designed and manufactured a 2 GHz spread-spectrum PCS handset and associated base station equipment. The Commission acknowledged Omnipoint's innovative efforts in the areas of: 1) radio frequency engineering and related spread-spectrum product design, development, miniaturization, and deployment of 2 GHz PCS equipment; 2) system architecture that facilitates coexistence with other users of the same frequencies; and 3) design and development of a base station interface that is compatible with advanced features of the public switched telephone network. In addition, the Commission found that Omnipoint's technology makes possible a viable PCS service, with the flexibility to be implemented in a variety of environments and with capabilities useful to subscribers, such as the ability to switch from licensed PCS frequencies to unlicensed frequencies, thereby permitting subscribers to use the same PCS handsets in residential or office environments in a manner similar to that of a cordless telephone. The Commission noted that Omnipoint's handsets also enabled other entities to develop PCS experimental systems, facilitating experimentation and establishment of this new service. In its nearly 100-page, single spaced Order, the Commission also explained the basis for each preference request that it denied.

Consistent with its broadband PCS spectrum allocation rules, the Commission designated for each broadband PCS pioneer Channel Block A, a 30 megahertz block that covers a single Major Trading Area (MTA). APC was awarded a preference for the MTA that includes Washington, D.C. and Baltimore; Cox's service area is the MTA that includes San Diego and Los Angeles; and Omnipoint's service area is the MTA that includes northern New Jersey and New York City. These were the spectrum blocks and service area designations proposed for this new service by these pioneers and where they conducted substantial experimentation and they fit within the Commission's overall broadband PCS spectrum allocation scheme.

In December 1993, on the same day that the Commission took final action in granting preferences to APC, Cox, and Omnipoint, the Commission decided that the existing pioneer's preference rules should continue to apply in the PCS proceedings and that pioneer's preference applicants that had been awarded tentative preferences would not be required to pay for their licenses.¹² The Commission stated that applicants in those proceedings had submitted their requests and publicly disclosed substantial details of their system designs in reliance on the continued applicability of the pioneer's preference rules and that it would be inequitable to change the rules for these parties who had already expended substantial resources in developing their pioneering technologies and proposals.

Several parties whose broadband PCS pioneer's preference requests had been denied petitioned for judicial review of the decision not to change the rules for the pending proceedings and the awards to APC, Cox and Omnipoint. They argued, among other things, that the Commission had not adequately explained its decision to award the broadband PCS preference licenses for free.¹³ In addition, parties filing petitions to deny Mtel's pending narrowband PCS application argued that Mtel should have to pay for its license.

On July 8, 1994, the Commission asked the D.C. Circuit Court of Appeals to remand the broadband PCS cases to the Commission for further consideration.¹⁴ The Commission stated that, in light of its current understanding of these issues, the Commission's stated rationale was no longer adequate to support its decision to award licenses to preference recipients for free and that it feared that the Court would ultimately vacate the Commission's orders and remand for further proceedings. Thus, the Commission indicated to the Court that it intended "to reconsider the substance of the decision not to charge these pioneer's preference winners for

¹² See First Report and Order, ET Docket No. 93-266, 9 FCC Rcd 605 (1994).

¹³ *Pacific Bell v. FCC*, No. 94-1148 et al. (D.C. Cir.).

¹⁴ Commission instructs General Counsel to Seek Remand of Broadband Personal Communications Service Pioneer's Preference Cases, FCC 94-182, Public Notice (released July 8, 1994).

licenses in circumstances where other licensees in the same service would pay substantial amounts in order to prevail in competitive bidding procedures."

In the Mtel licensing proceeding and on remand of the broadband PCS preference grants, the Commission, in two separate decisions, modified its position on the issue of charging pioneer's preference recipients for their licenses. First, in its July 13, 1994 Order granting Mtel a license, the Commission expressed concern about the effect on the marketplace and the apparent unfair competitive advantage that the award of a free license to one competitor could have when others must bid and pay for licenses in the same service.¹⁵ In addition, the Commission stated that the entire bidding process may be distorted by awarding a pioneer's preference recipient a free license. Parties who might otherwise bid might be discouraged from bidding "top dollar" or from bidding at all because of their concerns over entering a new competitive market saddled with significantly greater capital costs. The Commission concluded that it was unable to determine that a grant of a nationwide license to Mtel without payment would serve the public interest. Accordingly, it required Mtel to pay 90 percent of the lowest winning bid or \$3 million less than the lowest winning bid for nationwide narrowband PCS. The lowest winning bid in the nationwide narrowband auction held in July was \$37 million and 90 percent of that is \$33.3 million. Mtel has appealed the requirement that it pay for its license and will not have to make the payment until its appeal rights are exhausted.

On August 9, 1994, on remand of the broadband PCS cases from the D.C. Circuit, the Commission similarly found that its public interest mandate requires that payments be imposed on pioneer's preference recipients in the broadband PCS proceeding and other proceedings where tentative decisions had been made prior to enactment of the auction legislation.¹⁶ The Commission stated that, when it originally crafted the pioneer preference "reward," its "intention was to assure innovators that they would be able to obtain licenses so as to implement their innovations. We did not contemplate rewarding an innovator by giving it a license for free while its competitors had to pay, because at that time no one paid for initial licenses."

The Commission also referred to the objectives of the new auction statute, set out in Section 309(j)(3) of the Act, of "recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment" which could not be achieved if pioneer's preference licenses were free. The decision to charge broadband PCS preference recipients was buttressed by the Commission's "concerns about introducing financial inequalities into the broadband PCS market"—"awarding licenses for free to some parties while requiring others to pay substantial sums is likely to provide the pioneers with a financial advantage over their competitors"—and by its desire for a rational and fair auction process that will involve simultaneous bidding for highly interdependent and very valuable licenses. The Commission found legal authority for its decision to require payment in Section 4(i) of the Communications Act, the Act's so-called "necessary and proper" clause.

In sum, the Commission concluded that its public interest mandate required that pioneers not obtain licenses free of charge while their competitors must purchase licenses at auction. On further reflection, it was convinced that the equities, considered more broadly to include other bidders and the ultimate competitors of the preference recipients, favored a policy requiring payment. APC, Cox and Omnipoint were required to pay a discounted price that would adequately compensate them for any transaction costs incurred in reliance on the prior determination that they would receive their licenses for free, but would not provide them with an excessive financial advantage over their competitors or affect the auction process adversely. Specifically, under the Commission's decision, the broadband PCS pioneer's preference recipients (if otherwise qualified) will be able to obtain the licenses guaranteed to them under the Commission's rules only if they pay either 90 percent of the winning bid for the other 30 MHz license in the same market or 90 percent of the adjusted value of the license which is calculated based on the average per population price for the 30 MHz licenses in the top 10 markets as established at the upcoming auction scheduled to commence on December 5th.

The payment formula in the GATT legislation is slightly different. The bill would impose a payment of 85 percent of the average per capita winning bid amount for broadband PCS licenses auctioned in the top 20 markets excluding those markets in which the Commission has granted a pioneer's preference. The legislation also

¹⁵ *Nationwide Wireless Network Corp.*, 9 FCC Rcd 3635 (1994), petitions for review filed sub nom. *Mobile Telecommunication Technologies Corp. et al. v. FCC*, Nos. 94-1552 and 94-1553 (D.C. Cir. filed Aug. 11, 1994).

¹⁶ *Memorandum Opinion and Order on Remand*, 9 FCC Rcd 4055 (1994), petitions for review filed sub nom. *American Personal Communications et al. v. FCC*, 94-1549 et al. (D.C. Cir.).

provides that the sum owed to the Federal Government by the broadband PCS pioneers may be paid over a 5-year period, with interest for the first two years, and with interest and principal after the initial two years to be paid in accordance with the Commission's regulations. Finally, the bill contains a mechanism to ensure that the Federal Government obtains a minimum of \$400 million from the broadband PCS preference recipients.

APC, Cox, and Omnipoint have appealed the payment requirement imposed by the Commission. They argue that the decision to make them pay exceeds the Commission's statutory authority. Under the Commission's decision, the three entities will not have to pay anything until their appeal rights are exhausted. Parties opposing these preference grants have also continued to litigate the Commission's decisions. On October 6, 1994, the D.C. Circuit, on its own motion, held these cases in abeyance pending further order of the Court and citing the pending pioneer's preference provisions in the GATT legislation.¹⁷

I would be happy to answer any questions you may have.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. I would agree with the chairman here. I thought we were going to hear from the Commission, and I do not know what the chairman is going to do here, but we really—this business of having your lawyer answer the policy questions I am in disagreement with. I do not know how other members of the committee feel.

The CHAIRMAN. Well, you know, we want to be courteous to everybody, but it is a surprise to me that we have got the lawyers all coming here and the lawyers think they are going to try their case. I want to know what the Commission did and where the promise was made, and what—did they go back on their promise, and just exactly what occurred. Maybe Mr. Sallet and the administration wanted to appear.

STATEMENT OF JONATHAN SALLET, ASSISTANT TO THE SECRETARY AND DIRECTOR OF POLICY AND STRATEGIC PLANNING, DEPARTMENT OF COMMERCE; ACCOMPANIED BY JOHN KOSKINEN, DEPUTY DIRECTOR FOR MANAGEMENT OF THE OFFICE OF MANAGEMENT AND BUDGET

Mr. SALLET. I would, Mr. Chairman, like to make a short opening statement. As I said, I am Jonathan Sallet. I am the Director the Office of Policy and Strategic Planning at the Department of Commerce, and I am accompanied this morning by John Koskinen, the Deputy Director for Management of the Office of Management and Budget.

We are submitting for the record a written statement from the Director of OMB, Alice Rivlin, but I would like to take just a few moments to discuss the policy goals that are furthered by inclusion of this so-called pioneer's preference provision in the GATT implementing legislation.

The basic goals can be very simply stated. First, the administration believes very strongly that the private use of public resources should generate public funds. That is why we proposed and Congress enacted a landmark charge contained in last year's budget legislation establishing for the first time that the radio spectrum would be auctioned, with revenues going to the Federal Treasury, instead of being given away. OMB estimates that those auctions for

¹⁷ *American Personal Communications v. FCC*, Nos. 94-1549 et al. (D.C. Cir. October 6, 1994), reconsideration and rehearing en banc denied, October 25, 1994.

this spectrum will generate about \$12.6 billion for the Federal Treasury.

Second, we believe that that technological innovation is critical to our Nation's success in the global economy. In a world of innovation, it will be innovators that succeed, and we are prepared to succeed. We are prepared to succeed in a global economy. That is, we believe, our key to continuing progress toward good jobs for all Americans through innovation and trade.

I should pause a minute and just identify personal communications services, the so-called PCS services, which is the subject of our discussion and has been the subject of your opening statements. These new services offer the opportunity to create new digital telephone networks across the Nation in every community, bringing new competition of a kind that has not existed with all of its consequent benefits to consumers, innovation that demonstrates the viability of new services, and will also serve as the driver for new markets all over the world.

Earlier this year, Vice President Gore, taking note of both of these goals, announced that the administration favors the future use of pioneer's preference, but not if the pioneers are going to get the spectrum for free. He said that the administration would favor only a pioneer's preference program that gives a discount of 20 percent or less, enough to reward innovation, but capturing enough revenue to ensure that our first principle is also met.

Of course, these are not just administration goals. This is a provision that has already received bipartisan congressional support. The administration consulted extensively with Members of Congress, both Republican and Democratic, in both the House and the Senate.

After that consultation and hearing held in early October, both Democratic and Republican Members of the House Energy and Commerce Committee publicly stated their continuing support for this provision and that view is sound, because the pioneer's preference provisions meets both the administration goals. Let me explain why.

First, Senator Packwood, an issue that you raised, this provision is needed to avert the very real possibility that the pioneers will get their licenses for free. As you know, the Federal Communications Commission first issued an order stating that preference would be awarded free of charge. Then it reversed course, saying that pioneers should pay.

That second order is now under legal challenge from pioneers who claim that the FCC cannot legally change its mind and does not legally have the authority to impose payment upon them. There is in the administration's view an unacceptable risk that the pioneers would be successful, an unacceptable risk that the FCC order might be overturned and that the pioneers would receive these licenses and pay nothing.

Failure to enact this GATT provision would leave the pioneers free to try to get those licenses for free, but passage of it would ensure that the American taxpayers receive funds for this spectrum, estimated by OMB to be \$1.5 billion.

Second, this provision serves the purpose of rewarding innovation. Unlike previous methods of spectrum allocation, these pio-

neers did not have their names picked out of a hat through a lottery. They did not get this preference because of some prior market position that they might have occupied. Rather, the FCC found that all three have made significant advancements that will help bring the PCS market into being and, of course, that helps not just the pioneers but, like all innovation, it helps to create the markets. The expectations that will generate what is estimated to be \$12.5 billion in the auction and all of the value that the marketplace will derive from PCS services in the future.

Third, and I have made this point, but I just want to reiterate, this provision requires payment of substantial sums by the pioneers. OMB estimates the total auction from PCS will likely bring in about \$12.6 billion. It estimates that over a 5-year period these pioneers will pay about \$1.5 billion for the three licenses they will gain.

I would like to take one additional moment to address a question that has been raised in the opening statements, Mr. Chairman, and that is the question of the so-called judicial review provision. This is, in our judgment, a very straightforward, narrowly crafted provision designed to protect the basic purpose of the GATT legislation.

As I have said, the purpose of the GATT legislation is to get revenue from the pioneers. We cannot do that unless the pioneers get the licenses, and so the legislation simply says the FCC shall award the licenses because that is the fundamental predicate for us to receive the revenue that we need.

It also, in our judgment, precludes the pioneers from attacking this provision on the ground that the Government changed course and somehow treated the pioneers unfairly. In other words, we think it finally stops the pioneers from being able to go to court and claim that they ought to get their licenses for free.

This is a narrowly crafted provision. It does not keep the FCC from exercising continuing oversight over the pioneers. It does not keep other people from coming in and saying they, too, should get pioneer's preferences. It does not stop all sorts of other legal challenges. It does one thing. It makes sure that we get the money by making sure that the pioneers get the licenses.

For those reasons, we believe the judicial review provision is unexceptional. Like any statutory change, when Congress enacts a new statute, it eliminates certain questions that were unsettled under old statutes, and that is what this does. It is commonplace.

Moreover, the legal precedent for this kind of provision is unchallenged. Indeed, in 1992, Justice Clarence Thomas, writing for a unanimous U.S. Supreme Court, upheld a very similar statute that had to do with the so-called *Spotted Owl* case, in which case Congress adopted guidelines, said they must be applied by courts, and precluded judicial review of that provision.

We believe we are on sound policy and constitutional footing to go forward, so for all of these reasons the administration believes that inclusion of the pioneer's preference provision is absolutely critical.

We hope that this committee will agree that the provision meets the dual goals of fostering technological innovation which will be of great benefit to all Americans, while at the same time com-

pensating the public adequately for the private use of a public resource.

Mr. Chairman, I thank you and the committee for the opportunity to appear this morning, and I would, of course, be happy to answer any questions that you may have.

[The prepared statement of Mr. Sallet follows:]

PREPARED STATEMENT OF JONATHAN SALLET

Mr. Chairman, Members of the Committee, I am pleased to be able to appear this morning. I am accompanied by John Koskinen, Deputy Director for Management of the Office of Management and Budget. I would also like to submit for the record a written statement from the Director of OMB, Alice Rivlin.

I am pleased to appear in order to discuss the important policy goals that are furthered by the inclusion of the so-called "pioneers' preference provision" in the GATT implementing legislation.

The basic goals of the policy can be simply stated. First, this Administration believes very strongly that the private use of public resources should generate public funds. That is why we proposed, and Congress enacted, a landmark change in last year's budget legislation—establishing for the first time that radio spectrum would be auctioned—with the revenues going to the Federal Treasury instead of being given away. OMB estimates that the spectrum auctions that will raise an estimated \$12.6 billion.

Second, this Administration believes that technological innovation is critical to our Nation's success in the global economy. In a world of innovation, it will be the innovators that succeed in the global marketplace. And the United States is prepared to succeed. The global economy is our key to continuing our progress towards good jobs for all Americans—through innovation and trade.

Consider for a moment Personal Communications Services (PCS), which offers the opportunity to create new digital telephone networks across the nation—and in every community in the nation. Innovation that demonstrates the viability of new services will not only help to bring new competition and lower prices to all Americans—but it will also serve as a driver for the creation of new markets around the world.

Earlier this year, Vice President Gore, taking note of both of these goals, announced that the Administration favors the future use of pioneers' preference—but not if pioneers are going to get the spectrum for free. He said that the Administration would favor only the use of a pioneers preference program that gives a discount of 20 percent or less—enough to reward innovation, but capturing enough revenue to ensure that our first principle is also met.

Of course, these are not just Administration goals. This is a provision that has received bipartisan Congressional support. The Administration consulted extensively with members of Congress, both Democratic and Republican in both the House and the Senate. After that consultation and a hearing held in early October, both Democratic and Republican members of the House Energy and Commerce Committee publicly stated their support for the GATT provision.

That view is sound. Because the pioneers' preference provision in the GATT legislation meets both of the Administration's goals. Let me explain why.

First, this provision is needed to avert the very real possibility that the pioneers will get these licenses for free.

As you know, the Federal Communications Commission (FCC) first issued an order stating that the preference should be awarded free of charge. Then, it reversed course, saying that the pioneers should pay.

The pioneers now charge that the FCC lacks the ability to change its mind and lacks the authority to impose the payment requirement. Of course, the FCC disagrees.

Enactment of this provision results in certain payment by the pioneers. Failure to enact this provision would leave the pioneers free to attack the FCC and, if they prevail, to take these licenses for free.

In our judgment, that is an unacceptable risk—to leave this issue to the courts and take the chance of a huge windfall for the pioneers. The GATT provision ensures that the pioneers will pay.

Second, the pioneers' preference provision serves the purpose of rewarding innovation. Unlike previous methods of spectrum allocation, these pioneers did not have their names picked out of a hat, nor did they get spectrum just because of their previous market position. Rather, the FCC found that all three have made significant

advancements that will help bring the PCS market into being—and help, of course, to raise more revenues from the upcoming auction.

Third, the pioneers' preference will require payment of substantial sums by the pioneers. By the OMB estimates, the pioneers will pay about \$1.5 billion to the Federal Treasury over the next five years.

For these reasons, the Administration believes that inclusion of the pioneers preference provision in GATT is absolutely critical. We hope that this committee will agree that the pioneers' preference provision in GATT will meet the dual goals of fostering technological innovation while at the same time compensating the public adequately for the private use of a public resource.

Thank you, Mr. Chairman. I would, of course, be happy to answer any questions that you may have.

The CHAIRMAN. Mr. Sallet, whom did you consult with amongst us Senators here?

Mr. SALLET. In the time before this provision was sent to Congress?

The CHAIRMAN. Yes, including this provision, because you keep insisting you want to get the money, get the money. I would rather think what we want to do is get what is right, the justice of the provision.

Mr. SALLET. This is an instance, Mr. Chairman, where we believe we can do what is right and get the money. That is why we think it is the right course to follow.

The CHAIRMAN. You consulted with whom?

Mr. SALLET. Well, let me say, Senator, that we consulted with the majority and minority staff of both this committee and its House counterpart.

The CHAIRMAN. When did the staff meet, anybody on this staff meet with you?

Mr. SALLET. Senator, if I might, I would like to just note a specific communication on August 29, 1994. Deputy Secretary of the Department of Commerce David Barrem wrote a letter that was addressed to you, Mr. Chairman, to Senator Danforth, and to counterparts on the House side.

In that August 29 letter, which was sent approximately a month before the GATT implementing legislation was sent to the Hill, Deputy Secretary Barrem noted that the administration had worked with congressional staff to develop legislation that would deal with the pioneer's preference program.

The CHAIRMAN. When did you work—you keep going over the letter. Who did you work with on this committee?

Mr. SALLET. Well, in this regard, Mr. Chairman, we sent a letter that went both to the Chair of this committee and the ranking minority member.

The CHAIRMAN. But did you ever meet with any Senator relative to this provision of section 801?

Mr. SALLET. Mr. Chairman, if I could just note a couple of instances but then say I would like to be able to—

The CHAIRMAN. A couple of instances? Which Senator, and when?

Mr. SALLET. Senator, I did not personally meet with any Senator.

The CHAIRMAN. And did anyone else over there meet with any Senator? You know, here we have a provision that the Senate cannot even amend. We have not been in, as old Vandenburg said, on the takeoff, and you have got us on the landing, and it looks like a crash landing, to us.

Let me ask Mr. Barrett, when they say the FCC changed its position, on the order of August 9, 1994—of course, you joined in that order; did you not?

Mr. BARRETT. Yes, sir.

The CHAIRMAN. Now, did a license ever emit from the FCC? Did the Federal Communications Commission ever issue a license to anyone, a final license? I understand tentatively it was approved back the year before last, but it has not been subject to the final action in actual issuance of the license; is that right?

Mr. BARRETT. No, we never have.

The CHAIRMAN. You never have issued the license?

Mr. BARRETT. No.

The CHAIRMAN. As of this minute, the pioneers do not have a license?

Mr. BARRETT. No.

The CHAIRMAN. Do you or can you relate, and consult with Mr. Kennard, anywhere in the record where you promised that they would get it free?

Mr. BARRETT. I think, Mr. Chairman, and that is interesting, if you go back—and obviously you have it on one of my statements—I felt that if, in fact, at one point you had led someone to believe that there would be no cost, or little cost, that you had an obligation, but in terms of making a promise to be free, I do not remember there being a promise totally to be free.

The CHAIRMAN. That is what we are interested in, because as lawyers, there has got to be a promise, and there has got to be a consideration. Even though there has been a promise, you go right on down the line of basic contract law, specifically we all referred to the December order, December 23, where the statement did appear in a footnote that they would not be charged for the license; is that not correct?

Mr. BARRETT. That is true.

The CHAIRMAN. Now, that in and of itself was not in conformance with the policy. The policy was set out in the reconciliation bill earlier that year that there be no unjust enrichment; is that not correct?

Mr. BARRETT. That is true in the legislation; yes.

The CHAIRMAN. That is true of the legislation. Well, that is what I was thinking, because I go to the order itself of August that you joined in, and on paragraph 11, memorandum and order, and I read there, and Mr. Kennard, you can follow that, nowhere did the Commission suggest that it wished to give the preference recipient a financial or competitive advantage over other licensees.

Indeed, in rejecting proposals to give preferenced recipients a formal head start, because of the nature of our licensing process, the Commission explicitly rejected that goal. In other words, they contemplated a license, and that, in and of itself, would have been a tremendous advantage, because they could engage in this innovative technology as it goes, knowing that they were going to get a license, but not necessarily knowing they were going to get it free.

Let me hear your comment.

Mr. BARRETT. Mr. Chairman, I think that your assessment is right in that order, but also, Mr. Chairman, I want to point out that I think people could have reasonably been led to have believed

that if, in fact, there was something unique from a technological standpoint of some of their technology that they may have been given one free. I think that is—I think your assessment is right, but I also think that people could have easily been led to believe that they would have received the spectrum free if their innovations were unique.

The CHAIRMAN. They could reasonably have been led to believe, but is it not a fact that under section 4(i) of the Communications Act of 1934 you can reconsider any action?

Mr. BARRETT. That is what we did.

The CHAIRMAN. That is what you did, so you have got legal authority to do that. That just happened last week with respect to the cable rates, much to the chagrin of our new chairman and me. Cable rates are going to start going up. We thought we had caught that crowd, but now you have uncaught them, but you had authority to do it.

Mr. BARRETT. Yes, sir.

The CHAIRMAN. On the other section here with respect to that December 23 order, paragraph 13, we conclude—"at the very last part of that we conclude that the proper application of the pioneer's preference policy in the auction environment, where tentative decisions were made prior to the auction statute is to guarantee that the pioneers receive licenses, but on roughly the same terms as other licenses." That is no less than the pioneers were promised when the pioneer's preference policy was adopted. That is correct; is it not?

Mr. BARRETT. I think that is correct, Mr. Chairman. What are you talking about, now?

The CHAIRMAN. I am talking about the December 23, 1993 order, paragraph 13 of that memorandum.

Mr. BARRETT. Yes, you are correct, Mr. Chairman.

The CHAIRMAN. And we read on further in paragraph 14, "we nevertheless believe it is self-evident that awarding preferences for free to some parties while requiring others to pay substantial sums is likely to provide the pioneers with a financial advantage over their competitors."

I am reading that from the order.

Mr. BARRETT. You are right. Given the formula we developed, that is a true assessment.

The CHAIRMAN. That is right, and I read further, "we conclude that our public interest mandate requires that pioneers not obtain licenses free of charge while their competitors must purchase licenses at auction." That is correct; is it not?

Mr. BARRETT. That is correct, Mr. Chairman. Mr. Chairman, could I ask you a question just to clarify? Is that the August 9 order, or the December?

The CHAIRMAN. That is August 9. Excuse me, I apologize. August 9, you are right, paragraph 14.

Mr. BARRETT. Your assessment is correct, Mr. Chairman, and your reading.

The CHAIRMAN. In other words, the public interest mandate of the FCC is not to raise money.

Mr. BARRETT. You are absolutely right, Mr. Chairman.

The CHAIRMAN. I mean, you have got a crowd at the table, they are as anxious to raise money however they can, but I am talking to you as a Commissioner.

Mr. BARRETT. And my position was that I thought that to the extent there was a uniqueness that we should do what was right, and I think your assessment and reading of that is what we decided to do, and that is correct.

The CHAIRMAN. And then paragraph 17 of the August 9 order, "There is, however, no evidence in the record to suggest that such investment and information disclosure would not have been made if the preferred recipients had known they would have to pay for a guaranteed license."

In other words, you have not put them in a bad position—once they had the understanding, you said any reasonable person could feel that there was an understanding, since at that time there was no charge for licenses, that there was going to be no charge for the license, and maybe they revealed some of their innovative technology, but you looked at that carefully and you said there is no evidence in the record that suggests that the investment and the information disclosure would have put them in jeopardy. That is the language of paragraph 17.

Mr. BARRETT. That is correct, Mr. Chairman.

The CHAIRMAN. And finally, because I want to yield to my colleagues here, I think in paragraph—I think that is paragraph 10 of the memorandum and order. Our objective in establishing a pioneer's preference is to reduce the risk and uncertainty innovating parties face in our existing rulemaking and licensing procedure, and therefore to encourage the development of new services and new technologies. That is in paragraph 10.

Mr. BARRETT. Yes, sir.

The CHAIRMAN. Well, I think that pretty well covers it in that order. I was rather surprised, because I saw in a previous hearing where they all seemed to ignore totally the August 9, 1994 action memorandum and order, and I take it there is an appeal from that order at the present time, is there not?

Mr. BARRETT. There is litigation, Mr. Chairman.

The CHAIRMAN. And section 801, since you have been on the Commission, can you remember, once you were into a legal proceeding and appeal of this kind, that Congress injected itself—you have got a good lawyer there, Mr. Kennard.

Mr. BARRETT. No. I did not go to as good a law school as he did, but I do a pretty good job of thinking. I think, Mr. Chairman, that I cannot remember, but I think you have a right to inject yourself wherever you want to, I think.

The CHAIRMAN. Well, I think so. If this thing passes, we are in the soup. That is why we are having this hearing. But I mean, we do not usually do that, do we, otherwise, why appeal to the court? Appeal to some crowd that needs money up here on the Hill. I mean, that is a wonderful procedure.

Senator Pressler.

Mr. SALLET. Mr. Chairman, could I just complete the answer I started to give?

The CHAIRMAN. No. Let us yield to the gentleman here.

Senator PRESSLER. Let me just quickly—I want to get to Mr. Barrett. I think that the public would like to know what was the rationale about this pioneer's preference in the first place. Describe the public benefits that have been from the operation of this so-called pioneer preference, and how long has the FCC been reviewing pioneer preferences?

Mr. BARRETT. One of the things, Senator Pressler, is that we had looked at people bringing to the table something that we thought was unique in terms of technology, and in terms of a number of other things. Let me give an example.

For example, Cox thought that what—we developed what we thought was a feasibility of innovation using the cable television facilities and infrastructure as part of the broadband infrastructure, and we thought that was rather unique in the sense that it developed equipment that could somewhat interface with PCS microcells with fiber, with copper, and hybrid kinds of things. We thought that was rather unique. It may not have been. I am not an engineer.

And if you look at APC, APC demonstrated what I thought and what our engineers thought was innovative kind of technologies that would facilitate spectrum sharing, and to the extent that those were things that were any more unique than the other ones—some people say they were not, but were they unique in and of themselves, standing alone? Yes, they were.

We started out, as you well know, Senator, probably not even granting a pioneer preference, and then we changed, and if I am correct, we decided to grant a pioneer preference, I think, and then we changed in terms of the amounts, and now it is in the GATT legislation.

Out of almost 100, we turned down probably one-third of them. Were these uniquely different from the other ones? Do I know from a professional standpoint? No, I do not. I am not a lawyer, or I am not an engineer, I am a lawyer, but what I do know, Mr. Chairman, is that I respect our engineering staff. I think that they made a case to us that was relatively sophisticated. Even a novice like myself could understand the details of that.

Senator PRESSLER. But for the public's information, what you are doing here is you picked these three companies, APC, the subsidiary of the Washington Post, Cox—

Mr. BARRETT. And if you include Intel, we picked four.

Senator PRESSLER. But you were trying to get some research done, some innovation. You picked them as people who had done—had made a new contribution to the technology.

Mr. BARRETT. We picked them because we thought their technology was unique, and we thought that it would lend some newness and some innovativeness to this process, and our engineers led us to believe that they in fact did that.

Senator PRESSLER. Were there any others that may have been unique?

Mr. BARRETT. I am not sure, Senator Pressler. There probably were, but we made a decision based upon a good record, made on a decision—we made a decision that procedurally was correct, and I was a fan of pioneer preferences then, and I still am now, and I think we made the right decision that the public possibly would

gain something out of this, and notwithstanding that, they will gain something from the whole process, but hopefully they will gain a bit more from these.

Senator PRESSLER. But do you think this is—should we continue to use this methodology, and indeed, I know your engineers recommended this and your lawyers recommended that, but you and I are at the policy level. When I am out in Sioux Falls talking—

Mr. BARRETT. Mr. Chairman, thank you for—nobody ever elected me to anything.

Senator PRESSLER. When I am talking to the Rotarians in Sioux Falls, I cannot tell them my staff made me vote this way or that way, but in any event, is this a good policy procedure for us to use in retrospect?

Mr. BARRETT. I think, Mr. Chairman, as a matter of public policy, any time you think that you are getting something out of it for the citizens, it is good.

Now, I may differ in terms of cost and payment and things, but I do think it is a good public policy, but that is not to cast aspersions on those who do not get pioneer preferences. I think they also can make a contribution.

Senator PRESSLER. OK, but now, following the enactment of auctioning legislation in August 1993, the Commission despite the change authorizing spectrum auctions, initially retained the existing pioneer's preference policy, including the awarding of licenses to pioneer's preference winners at no charge, for free.

Less than a year later, the Commission did a complete about-face by issuing an order requiring 90-percent payment from their broadband PCS pioneers. How could the Commission reverse such a stark reversal? That is a 175-degree turn.

Mr. BARRETT. Well, Mr. Chairman, I guess that is one of the reasons I wanted Mr. Kennard to make a statement. I disagreed with that to some extent. I thought that—initially I was a supporter of granting it based on uniqueness and innovativeness free.

When we changed it, Mr. Chairman, I think that I talked through with my chairman, I talked through with my colleagues, and I was somewhat convinced, and as you well know I wrote a statement in that, and I guess that to the extent that one tries to bring together consensus, and one tries to not be unnecessarily combative when there is really no reason, I lost.

And so I voted for it because I thought that was the best we could do as a group, and I thought there was still a percentage of the 10 percent, a percentage there that would be good, and I thought people could build out the way they wanted to.

And as you know, my chairman was recused from that matter, as he has told you all before.

Senator PRESSLER. My final question to you regards the commitment of the Government. I think if we make a commitment to somebody, we should keep it. Now, were the pioneer preferenced winners—they were promised free PCS licenses, according to some. Is that true? Were the pioneers promised they would receive licenses at a discount, and what commitment did our Government make to them?

Mr. BARRETT. First of all, none were final. None of those things that we had suggested that we were going to do were final, and I

think that as a matter of pure honesty, those people, I was one of the few people that said if you lead one to believe—not promise. If you lead one to believe that there is some reasonable possibility they were going to get something free, then where I come from in Illinois, if you shake a man's hand and you agree to that, certain parts of Illinois, that is [laughter]. That that is a promise.

Senator DORGAN. Which parts? [Laughter.]

Mr. BARRETT. I am not going to say. [Laughter.]

I take the position if you make somebody a commitment—I made a commitment to you all when I first came in in 1989 that I would uphold the law and I would make decisions based upon the record, and I have done that. I think we have the same obligation to people. If you reasonably believe, and have them to build out something and spend their money and develop what we are led to believe by our engineers that may possibly, when it is final, be innovative, then I think we have an obligation to do that.

Did we do that? I guess to some extent we did. Did I support the 90 percent going 180 degrees? You are right, I did, and it was totally away from where I initially wanted to go. Am I comfortable with that? Yes, because it was made, the process was good, and I think in the public interest. I think the public interest was shared by that, even though it was a little further away from where I initially wanted it to be as an individual Commissioner.

Senator PRESSLER. I will direct this question to the administration. I think Senator Hollings' questions about how this came about is something we need to know if we are going to exercise our oversight as the Commerce Committee, as part of our job.

There are a number of questions, in addition to what Senator Hollings has said. At what point in the process did the Clinton administration become engaged, and why did the administration become engaged? Is this a normal thing?

Who from the administration was involved? Were any of the administration officials communicating with the FCC, an independent regulatory agency, about this matter? Was the administration negotiating with the three pioneers? Was this a back-room deal, or was it an open, deliberative process?

I guess all of those questions, starting with why did the administration become engaged in the first place?

Mr. SALLET. The administration became engaged because of the budgetary rules that govern trade agreements like GATT. As you know, Senator, under the budgetary provisions, tariff reductions of the kind that would take place after enactment of the GATT legislation lead to a loss of revenue to the Federal Government and require an offset.

The administration put together a financing package to match. Senator PRESSLER. This would be Norman Panetta, then, when he was head of the Budget Office.

Mr. SALLET. No, I am sorry, Senator. The administration put together a financing proposal that was a part of the GATT legislation that offsets the loss of revenue. The pioneer's preference provision is one part of that financing package.

Now, if I might, Senator, just to follow up on another part of your question, I would be happy to provide in writing a comprehen-

sive description of the kinds of contacts the administration had with Congress.

I do not purport to have personal knowledge, and as I said before, I did not personally meet with the U.S. Senator about this, but I also should state for the record that my understanding is that other members of the administration did.

In fact, I understand that in mid-August, on August 17, the chairman of the committee, Senator Hollings, had a telephone conversation with my boss, Secretary Brown, about the pioneer's preference provision. That is my understanding, Mr. Chairman.

The CHAIRMAN. What did we say? [Laughter.]

Mr. SALLET. My understanding of the conversation is that there was a belief that the members of the staff should meet with representatives of the administration, that a few days later in August that there was such a meeting arranged, that in fact—to which both minority and majority staff members were invited, and I believe a representative of Senator Danforth in fact attended, as I noted before.

On August 29, the Deputy Secretary then put in writing our current intention and asked for response to it, and that in September a subsequent staff meeting was held at which a staff member representing the majority of the conference committee as well as the minority staff attended.

The CHAIRMAN. Who was that?

Mr. SALLET. My understanding was that Ivan Schlager was at that meeting.

The CHAIRMAN. Schlager was at the meeting? Because I have never been at any meeting and never heard of these get-togethers or anything else until it was reported in the press.

Senator PRESSLER. Who from the minority staff was there?

Mr. SALLET. I believe that Kevin Dempsey was, although I am not absolutely certain. I know during this process we talked to both John Chambers and Kevin Dempsey.

Now, I do not purport this to be a comprehensive list of all of the contacts, but I do believe they are, Senator, illustrative of the kind of consultation that the administration carried out.

Senator PRESSLER. Now, let me ask this. I think we need to understand this. Can you explain—and I am not necessarily criticizing so much as I am trying to understand how our Government functions.

Can you explain why the FCC formula was not adopted and incorporated into the implementing legislation, because the FCC had a formula, and in particular why, under the new GATT formula, are the markets in which the pioneers receive their license; namely, New York, Los Angeles, and Washington, specifically excluded from the formula?

And why, then, is the GATT formula based on the top 20 markets instead of the top 10 markets? Does this not ignore the fact that all 3 pioneer markets are in the top 10 markets, thereby resulting in a further windfall for the pioneers?

Mr. SALLET. Senator, there are a number of differences between the proposals contained in the GATT legislation and the FCC provision. For example, the FCC order of August 9 gives the pioneers a choice about what methodology to use to calculate their payment.

The GATT provision gives them no choice. It just sets forth the standard.

Second, the FCC order contains no minimum value that the pioneers must pay. The GATT provision requires that under any circumstances at least \$400 million plus interest must be paid by the pioneers.

Now, you have noted, and I would like to address specifically, the way that the calculation is made and compare it to one of the alternative formulas. In one of the alternative formulas that the FCC uses, the FCC would look at the top 10 markets in price per population. That is to say, per capita price.

The GATT provision that is before you looks at the top 20 markets in population and size. It is our belief that any predictions about what will be the top markets by price per population is at this point entirely speculative, that the soundest way to go forward was to look at the markets by size of population and proceed accordingly.

You have also asked, Senator, why the provision excludes three markets in which the pioneers would receive their licenses. The reason is simple. We wanted a representative sampling of the markets that would exclude possible anomalies. One of those anomalies is the fact that in the three markets in which the pioneer's preference is obtained there would be remaining only a single, unrestricted block of 30 megahertz PCS spectrum to be auctioned.

Now, if that were the basis for comparison, according to some estimates the pioneers might end up paying even more than they would actually pay at auction, because it is very difficult to predict what will happen with that remaining 30 megahertz block.

It might be, for example, that questions of scarcity drive the bidding much higher than in the block the pioneers would occupy. It is also possible, Senator, that because this would be the fifth or sixth potential competitor in a marketplace that the pricing might be much lower. We do not know. We felt it was very speculative, and we should use a formula that gave us an assurance of representation but took out potential anomalies, and that is why we believe that the formula in this provision is sound.

Senator PRESSLER. Well, maybe part of this is also our fault that we did not know about this, but this is a most Byzantine story, and the problem is that we just get one vote on this up here, and maybe some of this legislation is submitted with just consultation and just a few people apparently involved, and that is—then Senators can debate it and amend it.

In this case, I hope you will understand that we have to go to our colleagues and ask them to cast one vote on something that there was, in my judgment, very little consultation here, and maybe part of that is our fault, but in any event, the system did not work very well in laying the groundwork for this, in my judgment.

Mr. SALLET. Well, Senator, that is why we appreciate the opportunity to appear today to answer questions and to explain the provision.

The CHAIRMAN. Very good. Senator Packwood.

Senator PACKWOOD. Mr. Sallet, let us once more go through the sequence, because once you understand the sequence—and Com-

missioner Barrett answer this, if you want also—it makes more sense.

Pre 1981, or 1991, you have got a lottery. Nobody pays anything for any licenses.

Mr. SALLET. That is essentially correct.

Senator PACKWOOD. What you had was a lot of people applying for licenses, and if they got them, they would sell them.

Mr. SALLET. It was a very vigorous after-market.

Senator PACKWOOD. That is a good way to phrase it, a vigorous after-market.

Then the FCC thinks well, if we are in essence going to give these away for nothing in a lottery, how are we going to get anybody to put any money up ahead of time to produce some innovative thinking if they have no guarantee they are going to get a license? So, in 1991, you come up with the pioneer preference program.

I am not going to argue whether the standards are right or wrong, but you are saying to some companies, none in particular at the time, but if you would meet the following standards and you do some innovation, we will guarantee that you will get a license. Now, at this stage, however, still nobody is paying for any licenses. It was not like you were giving away the license to them, because you were still in the lottery. All you did was guarantee they get a license for nothing, but everybody else got a license for nothing.

So, in 1991; is that correct, Commissioner?

Mr. BARRETT. I am not sure. Give me the time sequence.

Senator PACKWOOD. Well, I think 1991, you created the pioneer preference. You had the lottery going part of that time, did you not, and I may be off a year.

Mr. BARRETT. What I was trying to do was figure out when the Budget Act passed, where we had the varying options that authorized options, and I really do not know that. If you could just give me a minute to look at it—August 1993.

Senator PACKWOOD. 1993 is when the Congress changed. I am still back in 1991. I am still back in 1991. You have got the lottery, and whoever wins the lottery does not pay anything for the license.

Mr. BARRETT. That is right.

Senator PACKWOOD. And therefore there is no guarantee some company that puts up \$4 or \$40 or \$400 million to develop something innovative will ever get a license.

Mr. BARRETT. That is true.

Senator PACKWOOD. So, you create the pioneer preference program.

Now, at this stage, I do not know if you promise to the pioneers or you do not promise to the pioneers that they will not have to pay anything. At this stage, nobody is paying anything.

It was not so much that—all you were doing is guaranteeing them a license under the conditions that existed at the time. They only difference is, they were guaranteed a license instead of having to draw for it in the lottery.

Mr. BARRETT. Based upon what they would bring to the table in terms of innovative and uniqueness.

Senator PACKWOOD. I am assuming they have met that requirement. You have decided they are a pioneer. You are going to guar-

antee them a license. They are not going to have to pay for the license, but nobody is paying for the license in 1991; am I correct, Mr. Sallet?

Mr. SALLET. That is my understanding.

Senator PACKWOOD. OK, nobody is paying. So, if it was not so much a question, you said to the pioneers, do this and you will get it for nothing, what you said to the pioneers is, do this and you will get a license. You did not think to say, you will get it for nothing, because you were not charging anybody for licenses.

Now, along comes Congress in 1993 and Congress says, no, we think—we do not like the lottery any longer. We now want you to auction these off and get some money for them, and of course you have got to do that if we say you have got to do it. However, in December 1993, you still award the three pioneer licenses to the three companies we are talking about, on the assumption that you had a good faith obligation to do so.

Then comes the court suit 1994. No one knows how it might come out. And then you change your procedure, as you are entitled to do—there is no question you have the right to change—and you say, OK, we are going to charge the pioneers.

Now, here is where the dispute comes of the value of 10 versus 20 markets. All I can tell you is what we knew on the Finance Committee at the time we were considering GATT. We were reasonably familiar—and I do not think anybody talked with me. I am not complaining about that. Whether anybody talked with my staff or not, I am not sure. But we were reasonably familiar with what the administration was doing, and we knew the companies. We were not blind-sided or surprised.

We were kind of going on a rule of thumb as follows, and the reason it was a rule of thumb is no one exactly knew what these auction prices would be worth, and therefore you have no idea exactly how much money you are talking about, because it depended upon the auction.

We sort of went on the assumption that the pioneers would have paid 85 or 90 percent of an auction price, that we were going to settle this—the administration was going to settle this at about 70 percent rather than 90 percent, and in exchange their lawsuits were wiped out. Have I got that right roughly, Mr. Sallet, and I may be off on my percentage a bit, because we did not have exact figures.

Mr. SALLET. Well, I think that without reference to the specific numbers, I believe that was the common understanding.

Senator PACKWOOD. Maybe it was 85 and 65, but it was in that market, and the tradeoff was the lawsuit ends.

Mr. SALLET. Exactly.

Senator PACKWOOD. And the tradeoff is, we are guaranteed of some money, and as a matter of fact—and of course, here is where the dispute, where the witnesses come in. How much were these auction licenses going to be worth, and when the following witnesses come, we will get some substantial difference of opinion, but there is nothing unusual about differences of opinion as to the value of the lawsuit or the value of these licenses.

Mr. SALLET. That is exactly correct.

Senator PACKWOOD. And again—I say at least again on the Finance Committee, while we were not in detail involved in this, we knew what the administration was doing, and they had kept us advised.

So, that is where we are now, and now the question—and the Congress can do whatever it wants, but on GATT we are going to vote yes, or we are going to vote no, but even if GATT fails, Congress can still go ahead and do what it wants on these licenses, and that is roughly why we are having the hearing today, and we will hear from witnesses after this, maybe as to the possibilities of their success in the lawsuit, maybe as to what they think the licenses are really worth, but have I roughly, in chronological order, paraphrased why we are here today?

Mr. SALLET. That is our understanding, Senator.

Senator PACKWOOD. I thank you. I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. I was sitting here trying to understand what we are doing and why we are doing it this morning. This discussion, while interesting, is not a discussion that is very relevant to this general, much more important, question before us of GATT, a fundamental trade agreement that will affect this country in a dramatic way, and we are discussing pioneer preference items largely because GATT costs the Federal Government revenue and it must be made up, and the method of making up the revenue is to pull in a lot of extraneous issues, PBGC funding, pioneer preference issues, shove them into a GATT agreement, and say, "Well, we've paid for at least part of this." And so now we're diverting today, instead of talking about the central issue before us, and that is GATT, whether, at a time when our country is headed toward the second-worst trade deficit in American history, we want to be served more of the same under the new trade agreement called GATT. We're now off talking about this little revenue piece.

It is interesting for me to listen to the discussion about this, even though I think it is much less relevant and much less important than the central question before us here in Congress of GATT. Mr. Barrett, you indicated that there could have been reason for the companies to believe that they would receive the licenses for free, or without charge. I think you said there would have been reason for them to believe that.

Mr. BARRETT. I think that one could have, that one may have, even though we had not made any promises at one point that I spoke from, I think that if, in fact, you set up something called pioneer preferences, if, in fact, you lead one to—I think that by doing that you may reasonably lead someone to believe that they ought to go ahead and do certain things in terms of spending money on research and development and developing even further something that they perceive to be innovative and unique, and they didn't get it. And obviously, they didn't get it.

Senator DORGAN. But if at a time when you weren't charging for the licenses in the first place, and if Senator Packwood is correct that you simply said to those out there if you do certain things and bring to the table certain innovative approaches you will be able

to escape the lottery and be granted a license exclusive of the lottery—

Mr. BARRETT. There was no charge then.

Senator DORGAN. I understand that. That is my point. But my point is did not the FCC issue an order that indicated the preferences should be awarded free of charge? And if someone is out there looking at the issuance of an order, would there not be more, then, reason to believe?

Mr. BARRETT. That order—I don't know which one you are talking about—was not final, and so you can raise all kinds of issues there. But it was not a final order; if I'm correct.

Senator DORGAN. What kind of an order was it, then?

Mr. BARRETT. It was tentative, but subject to reconsideration and where we are now.

Senator DORGAN. So, let me understand this: The Commission met, thought through this, and apparently took a vote and said, "Gee, here is where I think we are, so this is the direction we are headed. But let everybody in the country understand that this is tentative." I mean, I do not quite understand the process.

Mr. BARRETT. Let me go backward from the process, and let me not even discuss GATT, but let me go back with whatever is in that formula. Let me go backward from there, and let me go to the point where I think the Commission wanted to do—was it 90 percent? And let us even go back further from that when the Commission wanted to knock out the pioneer preferences, and I was a friend of the pioneer preferences, and I was one that said did we ever, in fact, lead these people to believe, to bill out, that if there was something unique about their technology that we would give it to them free. And obviously, people disagreed with that, and I agreed that we probably had not done that at that time, we were still thinking through in that process.

In the end, and keep in mind we started out where we had no pioneer preferences, and then someone changed their mind. I have forgotten which Commissioner it was. We ended up with pioneer preferences in there. So, we go back from where we are now with the GATT formula; we go back to what we had initially, which was 90 percent; and whatever happened between the 90 percent and the GATT formula I have absolutely no idea. But I have since been led to believe that given the fact that there was some concern from the administration, I went from not wanting to charge them anything, to 90 percent. And that is when I got out of the negotiations. I do not know anything about the rest of it from that point on.

Yes, we may have led people to reasonably believe that. Some people say we did. Others say we did not. But keep in mind, Senator, at the point that we had a tentative agreement we were still thinking through how were we going to do this. We were still negotiating and talking among ourselves about the right formula internally at the FCC.

Senator DORGAN. Well, again, I do not have any great stake in this issue, but I would guess if you issue a tentative order that there are people out there in the private sector who are making judgments and investments and doing business on the basis that that is sort of the direction you are headed. Otherwise, why would you issue a tentative order?

Mr. BARRETT. One of my concerns was, did we reasonably lead people to believe that they were going to get something either free or cheap and cause them to bill out and to spend money on R&D and further enhance those so-called innovations and uniqueness?

Senator DORGAN. Well at that point, in terms of free, allow them to get something on the same basis that everyone else does except that like everyone else they would not have to pay for it but they would not have to be in the lottery, either?

Mr. BARRETT. Yes, you are right.

Senator DORGAN. I would just say that I generally agree with the chronology, as I understand it, that Senator Packwood related with respect to this, and I was sitting here wondering how he could be so right and lucid on this issue and so wrong on GATT. [Laughter.]

Mr. BARRETT. You are not expecting me to respond to that. [Laughter.]

Senator DORGAN. No, but I expect he will at some point in the future. [Laughter.]

Mr. BARRETT. And whatever I had before, you will see I agree with.

Senator DORGAN. Well, I think it is useful to air these issues to find out what goes on behind the murky fog of public policy creation in some of these agencies, and in this respect, at least, I do not support GATT. I think it is terrible public policy. I do not think we ought to have to pay for something we should not have, so my preference would be that we not include this as a revenue item in a trade agreement that we should not enact.

To the extent that the Congress is going to seriously consider more of the same, a trade policy that is, in my judgment, severely injuring our country, then I suppose under the budget rules one has to come up, even pretending that you are going to meet this in the first 5 years, you have to come up with a series of revenue items like this. No one is going to pretend this meets the budget rules for the remainder of the years, and we are going to ask everyone to vote on waiving the Budget Act on the rest of it.

This is interesting to me, and I would just say that I think Senator Packwood got it pretty much correct in terms of the chronology here. The question is what is this worth, what do we get for it, what promises were made, what expectations did those have who made investments back several years ago based on what they were led to believe by the FCC?

Mr. Chairman, I would like to spend another 20 or 30 minutes explaining why I think GATT is a horrible idea, but I suspect you would probably not want me to do that here. I would like to make an opening statement at tomorrow's hearing, however, with some additional charts.

The CHAIRMAN. I would love for you to make a 20-minute statement. [Laughter.]

Let me make the record clear, because some of my colleagues might want to ask Mr. Schlager here, he handles trade and GATT and said he went to a meeting and found out it was not on GATT, it was on communications, and I just happened to know because when I heard Mr. Sallet of this deal, I have been ranking member or chairman of the Communications Subcommittee one way or the other for 20-some years on this committee. I had not heard of it.

And I did not know what the score was, and I wondered, and just out of curiosity I asked about who were the Senators on our side?

Maybe, as you inferred, one may have, but we did not hear anything about it. And if anybody wants to question Mr. Schlager on that, that will be fine with me, assuming, and let us assume for the purposes of analyzing this thing, that, as Senator Packwood has related in the questioning of the witnesses, the seriatim and order of development is absolutely correct, and assuming, Mr. Barrett, that they were led to believe that they would not have to pay, now having assumed that, on the other hand that was a tentative order. It was not final, and then you issued the order of August 9, 1994.

Excuse me, you were about to speak.

Mr. BARRETT. I wanted to correct you, Mr. Chairman. I may have misled the Senator. I looked at my notes, and that was not a tentative order. It was an order subject to reconsideration and appeal, and I apologize.

The CHAIRMAN. Well, that is tentative, subject to consideration and appeal, certainly. And you, under your authority, as you have already answered, you had the authority under the basic Communications Act, which you have done frequently, as we know.

Senator DORGAN. Might I just interrupt. Is every order subject to reinterpretation and appeal? I mean, is this distinguished from any other order?

Mr. BARRETT. No, but I had given you an idea that—I thought I had given you an idea that it was a final or something else as opposed to being subject to reconsideration, and I did not want to lead you to believe that that was final in the sense that it was not subject to reconsideration of the bill. Obviously, those issues have been litigated or will be litigated somewhere down the line.

The CHAIRMAN. What appears to me is, still assuming or being led to believe that they were going to not have to pay, they willingly support the 85 percent. There is no question that the pioneer preference folks know they are getting something of tremendous value—namely, the license, one license in the big market, Washington; one in the very largest market, I take it, of all, New York; and one license in the second largest market of all, in Los Angeles, being of tremendous value. Now, you found in August of this year it ought to be 90 percent of the top 10 and did not exclude any market.

Now, they come and try to convince this committee that 85 percent is more than 90 percent. I have been trying to toy with that in my mind and see how they get that, because they leave out it is not in the 10 considered here on August 9, 1994's order. The three of them were included. But now they exclude those and put them down to 85 percent and say that is really more money.

Well, Mr. Sallet.

Mr. SALLET. Our view is simply that 85 percent of a certainty is bigger than 90 percent of potentially nothing, for the reasons that have been explained.

The CHAIRMAN. Well, if it was potentially nothing, then that means the petitioner's on appeal were correct.

Mr. SALLET. If they win.

The CHAIRMAN. If they win, they were correct, then. Is that not right? Is that not justice?

Mr. SALLET. Well, Senator—

The CHAIRMAN. Is that not what this committee should look at, not whether we get more money or less money? This is not a money deal.

Mr. SALLET. Mr. Chairman, we do not believe it would be justice for the pioneers to get these preferences for free. We believe this provision is a balance, and a fair balance, between rewarding them for innovation, good innovation, innovation that is going to help create the PCS markets, but on the other hand making sure that the American taxpayers get moneys from private parties who are using public resources. We think this is a fair balance.

The CHAIRMAN. Well, that is the talk of the administration, in the sense that I guess you are even characterizing the loss of revenue as a tax cut, the GATT; is that correct?

Mr. SALLET. Well, Mr. Chairman, you know I am not a very high ranking member of the Commerce Department, but I have learned not to infringe on Treasury Department territory.

The CHAIRMAN. But you do not mind infringing on the independent agency, the FCC. [Laughter.]

Thank you very much. Senator Pressler.

Mr. SALLET. This is certainly a revenue loss, for which this is a financing package to make up for that revenue loss.

Senator PRESSLER. Mr. Chairman, I just have two or three quick additional questions, and the witnesses might summarize and give part of these answers for the record because I know that the chairman wants to move on here. But Mr. Barrett, before proceeding with my questions specifically concerning GATT I want to raise an additional concern I have related to spectrum auctions. Specifically, I refer to a letter of October 27 from the cellular industry to the FCC concerning additional steps the Commission needs to take in order to ensure a competitive wireless communications system here in America. I would appreciate hearing from the Commission, prior to the December 5 auction, as to how you plan to deal with these issues relating to competition in telecommunications markets beyond the auction, unless you want to answer now, but you can submit it.

Mr. BARRETT. I would like to respond that I do not know who the letter is from or—you did not say who it was from.

Senator PRESSLER. It is from the cellular industry, CPIA.

Mr. BARRETT. If you do not mind, Senator, I would like to respond to that later. You will have it by Friday.

Senator PRESSLER. Fine.

Now, one additional question for you. I am fascinated with how we get new technologies in our society, and we had this big technology bill to give companies a financial incentive. Here, we used tax incentives. And since one of the major companies that got this tax break is owned by the Washington Post. A lot of taxpayers wonder, you know, the Washington Post. And I give them credit, they set the agenda on political matters as much as our leadership does, and they are one of the most powerful institutions in the country.

Now, can you tell me as a Commissioner not what your engineers said but what innovation did that subsidiary, APC, what did they bring to the table that got them this huge break?

Mr. BARRETT. One of the things, Senator Pressler, as I talked about, is that they did something where we thought we would be able to see a difference or a uniqueness in spectrum sharing, it seems to me. Whether or not that is true or not, I absolutely do not know. But when I started out earlier after Senator Hollings had asked me almost the same question I pointed out what I thought the three brought to the table. And I thought that one of the areas that I thought they were relatively unique in from the engineering perspective is the spectrum sharing aspect.

Is that unique? As a lawyer, I really do not know. But I think that I spent enough time with our engineers to ask them the very basic and novice questions that I am satisfied that it was.

Senator PRESSLER. Now, Mr. Kennard, I want to give you a chance to speak here very briefly, and you can give a summary to this and then submit the rest in writing. This is my last question. As the FCC's General Counsel, was the FCC's legal authority for imposing a fee on the pioneers based on a novel reading of the Communications Act? As the Commissioner General Counsel, did you feel confident going into court to defend that legal authority? And what is your view of the provision that would in effect moot all further recognition and court appeals and litigation? That is rather unusual, is it not, to have all further reconsideration in court appeals and litigation ruled moot? Does that strengthen your legal posture? Would you deal with those questions?

Mr. KENNARD. Certainly, Senator. The Commission based its authority to impose a payment requirement on the pioneers on section 4(i) of the Communications Act. That is what we call the necessary and proper clause of the act. Basically, it allows the Commission to take actions not inconsistent with the act, even though there may not be explicit statutory authority for it.

Am I comfortable going into court to defend it? Yes, I think we have a compelling argument in support of the 4(i) theory. It is not novel in the sense that it has never been used before. There are a number of cases cited in our August 9 order in which the courts have upheld the use of 4(i) authority. It is very difficult though, Senator, to predict what the DC circuit or any court would do with that theory. That is why the provisions in the GATT legislation would in effect eliminate that risk. Litigation is all about risk, and here, if there is a legislative solution for what is clearly a very complex and difficult regulatory legal and now political problem, I think that legislation would certainly eliminate all of that risk and uncertainty.

Senator PRESSLER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. No more questions.

The CHAIRMAN. Thank you gentlemen, very much.

Mr. Sallet, did you have anything you wished to add?

Mr. Sallet. No, Mr. Chairman. I appreciate the opportunity to be heard this morning.

The CHAIRMAN. Well, we appreciate your appearance, and particularly also, Commissioner Barrett, for your willingness on short

notice. We really wanted a Commissioner to tell us, and I think we have got a pretty good reflection of what occurred at the Commission level. Thank you very, very much.

Mr. BARRETT. Mr. Chairman, I also want to thank you for two nominations that I came before you, and I want to thank you for your leadership and support over the years, and Senator Pressler and Senator Packwood. Thank you.

The CHAIRMAN. Well thank you, and I thank Senator Pressler also, just like you.

All right, we will ask these other witnesses to come forward as promptly as they can. The committee welcomes Douglas G. Smith, president of Omnipoint Corp.; Bruce Fein, attorney at law; Lyndon Daniels of Pacific Bell Mobile Services; Wayne Schelle, chairman of American PCS; and Kevin Kelley, vice president of external affairs of Qualcomm.

Mr. Daniels, we will start over here and go from right to left. We have your statements, and your statements in full will be included in the record. And you can highlight it as you wish or give it in its entirety. But we are trying—if we have 5 minutes apiece that would be half an hour, and I would like to leave time for questioning here. Mr. Daniels.

STATEMENT OF LYNDON DANIELS, PRESIDENT, PACIFIC BELL MOBILE SERVICES

Mr. DANIELS. Thank you. Mr. Chairman and members of the committee: My name is Lyn Daniels. I am president of Pacific Bell Mobile Services, a Pacific Telesis Group company. It is my pleasure to be here today to testify on section 801 of the GATT implementation legislation concerning the award of three pioneer preferences for wireless broad band personal communications services.

Section 801 provides a payment formula for these pioneer preference licenses which threatens to distort the economics of three major PCS markets, to shortchange American taxpayers by \$1 billion, and to eliminate future judicial review of the SEC's decision to award these licenses, even though there is litigation already pending in the Federal courts. It is a bad deal for taxpayers, a bad deal for consumers, and a bad deal for America. The only winners here are three private businesses, including one of the largest newspapers and one of the largest cable companies in the United States. This is a classic case where the purported end, scoring \$400 million for GATT, does not justify the means.

It is not my purpose here this morning to convince you to take our side on all of these issues, but rather to urge you to look closely at the competitive imbalances that would result from what section 801 would allow, and to allow fundamental administrative and judicial processes to function. I would also like to make it clear that Pacific Telesis Group supports the GATT trade amendment, believing it to be a good trade policy. The problems we are discussing arrive from the pioneer preference provisions contained in the implementing legislation and unrelated to the provision of the agreement itself.

Pacific Telesis Group has long recognized the importance of wireless communications to the Nation's telecommunications infrastructure, and has been a strong supporter of wireless services in both

the FCC proceedings and in the marketplace. In May 1992 we submitted a pioneer preference request along with 95 other applicants. Like the eventual recipients, we spent tens of millions of dollars, more than \$40 million to date, in developing our proposal and our new technology we were recommending.

The GATT implementing legislation which was submitted to Congress in September contains provisions which are fundamentally different from the pioneer preference decision issued by the FCC in August. The GATT legislation mandates a massive reduction in the payment by APC, Cox, and Omnipoint to the U.S. Treasury by changing the formula used to determine how much the pioneers should pay. The legislation would establish a pricing formula requiring the pioneers to pay an amount based on the average price paid at auction for licenses in the top 20 nonpioneer MTA market, as shown on this chart—this information is prepared by Dr. Jerry Hausman of MIT—rather than on the average price paid for the license in the top 10 PCS markets. As this chart shows, this formula would result in a revenue loss to the Federal Government of nearly \$1 billion, and provide a discount to the three pioneer preference award winners of almost \$1.6 billion in value terms, despite the fact that the FCC never intended to give preference winners a financial or competitive advantage over other licenses but only sought to guarantee that the pioneers received licenses on roughly the same terms as the other licensees.

Section 801 would also prohibit any administrative or judicial review of the preference award already made, thereby terminating legal challenges now pending before the court, as well as possibly sweeping aside licensing issues that the FCC has not yet reviewed, that Congress has not considered, and that are not at all relevant to the financing needs of the GATT bill. The prohibition on an administrative or judicial review would sweep aside significant questions as to why the Commission issued preferences for areas much larger than those requested by the applicants, covering about 20 percent of the total U.S. population.

In this example, for instance, Cox applied for a license, as demonstrated here in the red area, for the San Diego marketplace where it has cable network infrastructure, representing a population of around 2.5 million people. Yet it was awarded a license for the entire Los Angeles MCA area representing about 19 million people, two-thirds of the State of California.

In addition, questions arise concerning the recently announced joint venture between Cox, Sprint, TCI, and Comcast, as to whether an inappropriate transfer of Cox's preference license will occur. Another question is will foreign ownership occur as a result of Sprint's relationship with foreign telecommunications companies. Will Cox use the technology for which it received its preference as required by the FCC? We do not know the answers to these, and if the proposed legislation is passed we may never be able to find out.

We are not asking Congress to decide the legal issues associated with the pioneer preferences. We are asking Congress to preserve the due process rights that all parties rely on. In short, the pioneer preference provisions of the proposed legislation threatens to distort competition within major telecommunications markets, short-

change American taxpayers, and negate the fundamental rights of all parties to obtain judicial and administrative review of far-reaching and controversial Federal agency decisions. For these reasons, we believe these provisions are unnecessary for GATT, and are bad public policy.

Thank you.

[The prepared statement of Mr. Daniels follows:]

PREPARED STATEMENT OF LYNDON R. DANIELS

Mr. Chairman and Members of the Committee, my name is Lyn Dameis. I am President of Pacific Bell Mobile Services, a Pacific Telesis Group company. It is a pleasure to be here today to testify on Section 801 of the GATT implementation legislation, concerning the award of three Pioneer Preferences for wireless, broadband Personal Communications Service ("PCS").

Section 801 provides a payment formula for these Pioneer Preference licenses with massive discounts to the preference recipients—discounts which threaten both to distort the economics of three major PCS markets, and to shortchange American taxpayers by nearly \$1 billion, if not more. The legislation also eliminates any future judicial or administrative review of the decision to award these licenses, even though there is litigation already pending in the courts involving significant legal issues. Section 801 would abruptly terminate all pending litigation, as well as prohibit any administrative or judicial review of additional issues only now coming to light, thereby leaving a number of important legal questions forever unresolved. Simply put, this is a classic case where the purported end—scoring \$400 million for GATT—does not justify the means.

My purpose this morning is to provide some background on these PCS Pioneer Preference issues and to give you our perspective on them. It is not my purpose to try to convince you to take our side on all the issues involved, but rather to outline for you the tremendous taxpayer-financed discount being given to three companies that have already been given a significant competitive advantage in the emerging PCS market through the award of special Pioneer Preference licenses, and to encourage you to allow the administrative and judicial processes to function.

I would also like to be clear about where Pacific Telesis Group stands on the GATT trade agreement. We believe that GATT represents good trade policy, and that it will be good for the American economy. However, we believe that the proposed implementing legislation unnecessarily raises serious problems completely unrelated to the GATT agreement itself. While Section 801 might be good for the Washington Post and the other preference recipients, it will be bad for American taxpayers and consumers—depriving the U.S. Treasury of \$1 billion or more in potential revenues, and impeding competition in three of the largest PCS markets in the nation.

BACKGROUND

Pacific Telesis Group has long recognized the importance of wireless communications to our nation's telecommunications infrastructure and has been a strong supporter of wireless services both in FCC proceedings and in the marketplace. The FCC began proceedings in 1990 to establish rules for the provision of wireless PCS.¹ Throughout the proceedings, we have been an active and enthusiastic supporter of the Commission's goals for PCS. We agree with the Commission that widespread availability, speedy deployment, diverse services, and fair competition will ensure that consumers are given the best opportunity to quickly obtain the benefits of mobile services. We have participated at each stage of the PCS proceedings by filing extensive comments in which we have provided technical, economic, and public policy support. In addition to our comments specifically concerning PCS, we have filed comments on numerous occasions to assist the Commission in establishing the best possible spectrum auction procedures for broadband PCS.

In 1990, the FCC also began a rulemaking proceeding to consider the creation of Pioneer Preferences for radio spectrum licenses. In 1991, the FCC adopted its Pioneer Preference rules and asked parties to file requests for Pioneer Preferences.

In May of 1992, we and ninety-five other applicants submitted Pioneer Preference requests² and, like the eventual recipients, we spent tens of millions of dollars in developing our proposal and the new technology we were recommending.

¹ Notice of Inquiry, GEN Docket No. 90-314, 5 FCC Rcd 3995 (1990).

² Pacific Bell's Request For A Pioneer's Preference, GEN Docket No. 90-314, May 4, 1992.

Although one might be led to think so from their subsequent statements, APC, Cox, and Omnipoint—the three pioneer preference recipients—were not in the slightest bit unique in spending great quantities of time and money on developing PCS or in revealing information about their work. For instance, in our case, Telesis Technologies Laboratory obtained an experimental license from the FCC, filed quarterly public reports on its progress, and ultimately developed a spectrum sharing method for PCS to coexist efficiently with existing fixed microwave users, maximizing use of the spectrum. We also funded Bellcore's development of technology to allow use of telephone infrastructure as back-bone networks for efficient, widespread deployment of PCS. In our request, we pointed out that by the end of 1992 alone our Telesis Technologies Laboratory spent nearly \$20 million on pioneering research for PCS. This funding has now risen to over \$40 million. Shareholders funded all of this expense.

In November of 1992, the FCC issued a Tentative Decision for the Pioneer Preference awards.³ From the beginning, that Decision was subject to challenge and debate from within the Commission as well as among the affected parties. In its Decision, the FCC proposed to award Cox the whole Los Angeles Major Trading Area ("MTA"), which includes the southern half of California and parts of Arizona and Nevada, even though Cox had requested only areas where it had cable properties. According to Cox, in the southern half of California that included only the markets of Bakersfield, San Diego, and Santa Barbara.⁴ Cox said that if it had to ask for only one market, it wanted San Diego. The FCC proposed to award Omnipoint the whole New York and New Jersey MTA, even though it had requested only Northern New Jersey, and APC the whole Washington, D.C. and Baltimore MTA, even though APC had requested only the D.C. and Baltimore MSAs (Metropolitan Statistical Areas). These license areas were surprisingly large—including far more territory than requested and covering about 20 percent of the United States population.

In order to determine whether and how to finalize the awards, the FCC requested comments on its Tentative Decision and pointed out again that, in the awards proceedings, ex parte contacts with FCC decision-makers were prohibited.

With the Tentative Decision, Commissioners Andrew C. Barrett and Ervin S. Duggan issued Separate Statements. Commissioner Barrett stated: "I would feel more comfortable with this decision if the distinctions between those tentatively selected and those tentatively denied were more clear, particularly where extensive experimental efforts have occurred." He suggested that perhaps the Commission should have "issued a public notice to solicit comment on the appropriate specific technical criteria for selecting PCS pioneers." He added: "[W]here it is difficult to make significant distinctions between pioneering efforts, I question whether we should award a large number of pioneer preferences."

Commission Duggan pointed out that from the beginning of the Pioneer Preference program he had been concerned about "the following potential dangers":

- "the danger of politicizing awards that should be impartial";
- "the danger of distracting ourselves with hair-splitting debates about what constitutes real newness, novelty and pioneering"; and
- "the danger of bogging the Commission down in administrative litigation that instead of speeding, delays its efforts to foster new communications services in the public interest."

Commissioner Duggan added:

"As the Commission has moved forward with specific pioneer's preference awards, I have hoped that my misgivings would subside. Instead, they have increased, especially as we've attempted to discern the relative merits of a large number of applicants. Close observers who attended to comments from the bench will note that I am not alone. My colleagues have expressed similar concerns: concerns that are more emphatic when spoken privately. The collective decision of the Chairman and Commissioners not to receive visits from pioneer's preference applicants, for example, seems to me symptomatic of an underlying uneasiness with the dangers that hang over this new enterprise of ours."

Under the Tentative Decision, the preference winners were not to be charged for their licenses. This is not surprising, because, at that time, licenses for radio spectrum were granted to all licensees at no charge through the process of comparative hearings or lotteries. Subsequently, in the 1993 Omnibus Budget Reconciliation Act, Congress gave the FCC the authority to charge for radio spectrum licenses through competitive bidding in auctions.⁵ The Commission expressly recognized that the ad-

³ Tentative Decision GEN Docket No. 90-314, 7 FCC Rcd 7794 (1992).

⁴ Cox Request For Award Of Pioneer Preference, p. 1, May 4, 1992, GEN Docket No. 90-314.

⁵ Codified at 47 U.S.C. § 309.

vent of competitive bidding authority might have undermined its basis for giving away preference awards for free—or for giving them out at all. Accordingly, in October of 1993, the FCC initiated proceedings to consider whether to continue the Pioneer Preference program or to change the rules for Pioneer Preference awards, including whether or not to charge for the awarded licenses.⁶

Pacific Telesis continued to support Pioneer Preferences. Our proposal, however, was that they be for 10 MHz Basic Trading Areas ("BTAs"), which are more commensurate in size with the areas actually requested by APC, Cox, and Omnipoint. We also proposed that each preference winner pay for its license based on the lowest winning bid among the other 10 MHz blocks in its BTA.⁷ Our proposal would reduce distortions in the PCS auction and in the competitive PCS market and would avoid the fiscal drain on the Treasury.

Meanwhile, although the FCC had prohibited ex parte contacts with Commission decision-making personnel concerning Pioneer Preference awards, the tentative awardees reported making numerous ex parte contacts in the critical two months period leading up to the announcement of the final awards. APC alone met with Commission decision-making personnel 30 times in that period,⁸ meeting with the same FCC officials over and over again. In response to our letter reporting the preference winners' ex parte activities, the FCC's Managing Director found that the ex parte rules "might possibly have been violated in two respects." But he concluded that those violations were either "unintentional technical infractions of the rules", or would not, in any event, "have tainted the proceedings or prejudiced the rights of other parties."⁹ We disagree. We believe that these actions 1) violated the Commission's rules, 2) confirmed Commissioner Duggan's concerns about "the danger of politicizing awards that should be impartial," and 3) resulted in a bad decision.

On December 23, 1993, the FCC awarded APC, Cox, and Omnipoint the free MTA licenses that it had tentatively proposed, with no change in rules to reflect competitive bidding.¹⁰ In February of 1994, Pacific Bell and ten other parties filed appeals at the U.S. Court of Appeals in Washington, D.C. challenging the FCC's Orders that granted Pioneer Preference awards. In March of 1994, nine parties filed Petitions For Reconsideration with the FCC of its denials of their requests for Pioneer Preferences. Pacific Telesis believes that the Orders do not meet legal standards for rational rulemaking and suffer from the following defects:

- The FCC failed to distinguish adequately among those who were awarded Pioneer Preferences and those who were not.
- The FCC awarded unrequested, unjustifiably large blocks of spectrum as preferences. Although the FCC attempted to rationalize MTA awards encompassing entire regions based on the supposed need to award 30 MHz licenses, the FCC made no adjustment to the size when it created smaller 30 MHz BTA licenses which would have met that asserted need equally well.
- The FCC failed to justify its decision to exclude the preference awards from the auction, rather than to award a bidding credit.
- The FCC's proceedings were tainted by unlawful ex parte contacts.

In June of 1994, HR 4700 was introduced in the House Energy and Commerce Committee. This bill required pioneers to pay 90 percent of the highest bid received at the auction for a comparable PCS license and left in place all parties' rights to seek administrative or judicial review of the FCC's Pioneer Preference orders.

In response to HR 4700 and to the Court appeals, the FCC filed a Motion for Remand by the Court so that the FCC could reconsider whether to charge for Pioneer Preference awards, rather than to give them away. The Court remanded the case to the Commission, and in August the Commission decided that each preference winner would have the choice of paying either 1) 90 percent of the winning auction bid for the other 30 MHz MTA license for its preference area, or 2) 90 percent of an amount based on the average per-capita price paid at auction for licenses in the top 10 MTAs. The FCC required pioneers, like all other license recipients, to pay for their license within 30 days.¹¹

⁶Notice of Proposed Rulemaking, ET Docket No. 93-266, 8 FCC Rcd 7692 (1993).

⁷Comments of Pacific Bell and Nevada Bell, pp. 4-5, November 15, 1993, ET Docket No. 93-266.

⁸See Letter from Michael K. Kellogg on behalf of Pacific Bell to Andrew S. Fishel, FCC Managing Director, January 26, 1994. The Pioneer Preference winners filed replies in February 1994.

⁹Letter from Andrew S. Fishel, at 9-10, to Michael K. Kellogg, May 27, 1994.

¹⁰First Report and Order, ET Docket No. 93-266, 9 FCC Rcd 605 (1994); GEN Docket No. 90-314, Third Report and Order, 9 FCC Rcd 1337 (1994).

¹¹Memorandum Opinion and Order on Remand, ET Docket No. 93-266, GEN Docket No. 90-314, released August 9, 1994, para. 39.

In August of 1994 Pacific Bell and others again filed appeals in the Federal Court based on what we believe were the remaining legal defects in the Commission's Orders, and at about the same time, APC filed an appeal of the provision that it pay anything at all for its license. Currently, 20 parties have pending either petitions for reconsideration or appeals of the FCC's broadband PCS Pioneer Preference Awards Orders.

THE LEGISLATIVE PROVISIONS ON PIONEER PREFERENCES

The GATT implementing legislation which was submitted to the Congress in September contains provisions which are fundamentally different from the August decision of the FCC. The legislation mandates a massive reduction in the payment by APC (70 percent owned by the Washington Post), Cox and Omnipoint to the U.S. Treasury by changing the formula used to determine how much the pioneers should pay. The legislation would establish a pricing formula requiring the pioneers to pay 85 percent of an amount based on the average price paid at auction for licenses in the top 20 non-pioneer markets. In establishing the base off of which the pioneers' payments are to be calculated, this new formula would thus substitute the prices paid for licenses in 13 smaller markets for the prices paid in the three large pioneer markets. In other words, the value of the New York, Los Angeles, and Washington licenses would be dropped from the base, while the value of licenses in smaller cities such as Cleveland, Milwaukee, and Pittsburgh would be included.

Some have suggested that the difference between the FCC's formula and that contained in the GATT bill is small—a difference of only 5 percent. The key, however, is not the reduction from 90 percent to 85 percent. The key is the change in the base—in other words, 85 percent of what? The "what" is a much lower base which is going to cost the American taxpayers nearly \$1 billion, if not more.

In addition, the GATT bill would also permit the Pioneer Preference winners to pay for their licenses over five years, with interest being charged at below-market rates. No other PCS competitors would be afforded such generous payment terms. Finally, as previously noted, the award of the Pioneer Preference licenses would never be subject to any legal or administrative challenge, despite serious questions about the propriety of those awards.

THE ERRONEOUS CELLULAR LICENSE ANALOGY

APC has argued that it should receive a Pioneer Preference license free because over ten years ago cellular licenses were awarded free. This argument is ironic in at least two respects. First, APC's majority owner, The Washington Post, received free cellular licenses at the same time Pacific Telesis and hundreds other recipients received their licenses. Second, like the Washington Post, Pacific Telesis no longer holds any cellular licenses. Everyone was treated the same then. The argument is now meaningless.

What is meaningful is the legislative proposal in the current situation which purports to grant three PCS licenses at a massive discount compared to how all other applicants and markets are treated.

DISCOUNT PRICING FORMULA

In its August 9, 1994 Order, the FCC gave Pioneer Preference winners a generous price break. As noted above, the FCC allowed each winner to choose to pay, within 30 days, the lower of 1) 90 percent of the winning auction bid for the other 30 MHz MTA license for its preference area or 2) 90 percent of an adjusted value based on the average per-capita auction price of the nation's top ten MTA licenses.

The GATT Legislation substantially increased the price break and thus generates far less revenues for the Federal Treasury. This is done in three steps:

1. The base-price discount is calculated by using the average adjusted value of licenses in the 20 largest non-pioneer MTA markets, rather than by using either of the FCC's alternatives, which are limited to, at most, the top 10 MTA markets.

2. A 15 percent discount, rather than the FCC's 10 percent discount, is taken off the already discounted base price.

3. An additional delayed-payment discount results from the 5-year, below-market financing terms available to the pioneer preference licensees. While this does not directly take money from the Federal Treasury, it provides a real benefit to the pioneers, thus further upsetting the competitive balance of the PCS marketplace.

Based on his econometric study of PCS markets, Dr. Jerry Hausman of MIT estimates that the per-capita value of the three Pioneer Preference markets is 24 percent greater than the average of the per-capita values of the 20 largest non-pioneer markets. These higher values largely reflect higher commuting time and population

densities in the Pioneer Preference markets and are consistent with the relative values of market areas of cellular service.

The discount from fair market value under the FCC's Order is approximately \$526 million. Because, under the proposed legislation, preference winners would pay an amount based on average prices in the 20 largest non-pioneer markets, it is estimated that pioneers would pay the Treasury nearly \$1 billion less than the fair market value of the licenses. When the installment payment plan and below market interest rates are factored in, the present value discount to the three preference winners climbs to \$1.58 billion. The U.S. Government would substantially subsidize investment in new technology for The Washington Post, Cox, and Omnipoint to an extent far greater than they have so far invested themselves.

The legislation's use of the 20 largest non-pioneer MTA markets is directly contrary to the FCC's decision to take into account no more than the top 10 markets. The FCC believed that including smaller markets would distort the results. Bids for smaller markets will be substantially lower than bids for larger markets on a per-capita basis. Experience with cellular service shows that the per-capita value of PCS will be greater in areas with longer commute times and higher population density. People are more apt to subscribe to a service and are willing to pay more if they will have more use for the service. Thus, including in the price average more than the top 10 markets would substantially decrease the preference winners' payments. This would be contrary to the FCC's conclusion in its August, 1994 Order that it had never intended to give preference winners a financial or competitive advantage over other licensees and that, although it should "guarantee that the pioneers receive licenses," they should receive them "on roughly the same terms as other licensees."¹²

Therefore, the key difference between the proposed legislative price formula and the FCC's formula is not the 5 percent difference between the proposed 85 percent figure and the FCC's 90 percent figure, but the different base prices to which those percentages are applied.

APC, Cox, and Omnipoint have challenged our analysis. They assert that MTA values will not vary significantly by region. If that is true, why does the proposed legislation, which they apparently helped negotiate, establish a base price using twice as many MTAs as the FCC used? If there is little or no difference, why did they insist on using twenty markets instead of the FCC's top ten? If the license recipients really believe that there is only a 5 percent difference between their formula and the FCC's formula, are they willing to guarantee that they will pay the FCC's formula less 5 percent?

THE EFFECT OF THE DISCOUNT PRICES ON THE PCS MARKET

The award of the three Pioneer Preference licenses at prices far below fair market value would create inefficiency and harm competition to the detriment of consumers. The primary reason for conducting spectrum auctions is that, in addition to raising revenue for the Treasury, they promote efficiency and effective competition by allocating spectrum to the users that are likely to value them most highly and to offer better or lower priced services. The FCC has said that awarding licenses to those who value them the most is the best way to encourage competition and the rapid deployment of new wireless technologies and services. A system, however, that allows the allocation of licenses to users who place less value on them and who may not be able to employ the spectrum as efficiently as others impairs competition by allowing the substitution of less efficient and less effective competitors for more efficient and more effective ones.

If a Pioneer Preference winner is allowed to pay an amount far below the market price for its license, that preference winner will accept the license even if it is unable to use the spectrum as efficiently as other potential licensees. As a result, efficiency will be lower, competition will be impaired, and consumers will be adversely affected.

Requiring the preference winner to pay an amount approaching a market price for the license, however, introduces an element of market discipline. A substantial payment requirement will ensure that the winner will not choose to accept the license unless it expects to compete effectively and thereby earn an acceptable return on its investment. The motivation to protect its investment and earn a fair return will compel the preference winner to operate more efficiently and compete more effectively, thus promoting competition in the PCS market.

¹² Memorandum Opinion and Order on Remand. ET Docket No. 93-266, GEN Docket No. 90-314, released August 9, 1994, para. 13.

Therefore, imposing a payment that closely approximates fair market value mitigates adverse effects on competition and consumer welfare. A deep discount for the three PCS Pioneer Preference licenses, however, frustrates this economic approach.

THE EFFECT OF GUARANTEEING LICENSES TO PREFERENCE WINNERS

The proposed legislation prohibits the FCC from reconsidering the award of the three preferences, prohibits the FCC from delaying the grant of licenses based on those awards more than 15 days after the effective date of the legislation, and bars administrative or judicial review of the award of both the preferences and the licenses. By including licenses in these prohibitions, the legislation would not only lock in place the preference winners and the size of their preferences, but it also may sweep aside licensing issues that the FCC has not yet reached, that Congress has not considered, and that are essentially irrelevant to the GATT agreement.

For instance, in order to attempt to ensure the integrity of the Pioneer Preference awards, the FCC conditioned the actual grant of licenses "upon the licensee building a system that substantially uses the design and technologies upon which the preference is based." This condition applies to the entire service area of the license for the initial five-year build-out period. The FCC imposed this condition in order "to enhance the integrity of [the FCC's] pioneer's preference policies" and because the condition "is inherent in [the FCC's] pioneer's preference policy that the innovator use the technology upon which its preference is based."¹³ The FCC explained that "the risk an innovator takes is that it may not be able to translate its developmental work into full business operation."

In our Petition To Deny Cox's PCS License Application, we established that Cox's application is defective because it does not provide any assurance that Cox will substantially use the technology upon which its preference is based (i.e., a cable-based PCS network) throughout the MTA. In reply, Cox did not even attempt to correct this defect, but simply said that we had not proven that it would not use the appropriate technology. We replied that the burden to make the showing is on Cox, which has the needed information, and not on us.

Subsequently, on October 25, 1994, there was an announcement of the formation of a joint venture among Cox, Sprint, Tele-Communications, Inc. ("TCI"), and Comcast. On October 28th, we informed the FCC that this joint venture raises significant new issues concerning Cox's license application that need to be addressed in an additional round of comments and reply comments. For instance, the press release stated that "the joint venture will be owned 40 percent by Sprint, 30 percent by TCI, and 15 percent each by Comcast and Cox." An article in *The Wall Street Journal* on that same day stated that Sprint will own 40 percent of Cox's PCS license which would be awarded under its application pursuant to Cox's Pioneer Preference.¹⁴

Therefore, the joint venture raises serious legal questions. Has Cox transferred all or part of its Pioneer Preference? Will foreign investors acquire an interest in Cox's Pioneer Preference when Sprint sells 20 percent of itself to the French and German national phone companies, as *The Wall Street Journal* reports is its intent? In its PCS system, will Cox and its partners substantially use Sprint's network instead of the design and technologies upon which Cox's preference award is based?

We currently do not know the answers to these questions, and if the proposed legislation is passed subsequent knowledge may be too late to be of value. The proposed requirement that the licenses be awarded within 15 days without any opportunity for administrative or judicial review of the award of the licenses may well prevent the FCC from reviewing these issues prior to granting the licenses. Moreover, though the effect of this language on the preference winners' fixture uses of the licenses is unclear, the language is an invitation for the preference winners to ignore the FCC's intent that the Pioneer Preferences benefit the public. The FCC established safeguards to avoid supplying preference winners with licenses that they may use in ways different from that the Commission intended. For example, the Commission specifically intended to avoid the creation of an instant windfall from immediately selling all or some of the license to other parties.

Congress presumably does not intend to remove these safeguards and risk this result. But the proposed legislation may do so, and these words may get swept into law merely because they ride on, and are tied to, unrelated trade legislation.

¹³ Third Report and Order. GEN Docket No. 90-314, 9 FCC Rcd 1337, para. 8 (1994).

¹⁴ See John R. Keller and Mark Robichaux, "Sprint, 3 Cable Firms to Form Phone Venture," *Wall Street Journal*, October 25, 1994 at p. A10.

THE EFFECT OF PRECLUDING JUDICIAL REVIEW

Preempting judicial review of the FCC's award of the preferences and licenses would be an extraordinary step by the Congress. As far as we are aware, Congress has never, in two centuries, purported to preclude all judicial review of the validity of its own acts. The proposed legislation, however, would do just that. It would order the Commission not only to issue the preferences but also to issue licenses—even though the Commission has not decided whether the preference winners' license applications are consistent with governing law—law that Congress has previously said all licensees must meet and that is left in place for all other licensees. The legislation then purports to eliminate judicial review of these congressionally commanded acts.

Thus, under the proposed Pioneer Preference legislation, Congress orders the FCC to take action that, under existing law, may well be illegal, and it orders the judiciary not to take cognizance of that illegality notwithstanding existing provisions for judicial review and notwithstanding our existing appeal in federal court. Our counsel believe that this Pioneer Preference rider violates the Article III separation of powers clause of the U.S. Constitution, the due process guarantee of the Fifth Amendment, and the uncompensated takings prohibition of the Fifth Amendment.

In hearings before Joint Subcommittees of the House Energy and Commerce Committee, the primary justification given for this extraordinary legislative provision was to avoid the uncertainty of litigation and ensure that some revenue is raised by the award of the Pioneer Preferences. In reality, however, this Pioneer Preference rider is certain to create new litigation, while ensuring that less revenue is raised than under the FCC's rules.

This is the wrong approach. If Congress merely wants to ensure that revenue is raised, it can codify the FCC's payment formula to be used if the FCC continues to exclude the preferences from competitive bidding, without addressing the size of the awards and the identities of the awardees. Better yet, Congress can simply clarify that the FCC has the authority to charge for licenses that are subject to Pioneer Preference awards. Our attorneys have analyzed the FCC's current authority and have concluded that it is substantially likely to be upheld on appeal. But clarifying language could be helpful. There is no need, however, to codify an even deeper discount and certainly no need to foreclose judicial review of the FCC's decision to grant awards to APC, Cox, and Omnipoint and to grant MTAs rather than BTAs.

We do not seek Congress' affirmative help on these issues; we just want normal administrative and judicial review processes to be left in place. We are confident that, if the Court reviews the entire record, the Court will set aside the Pioneer Preference awards. We believe that it will find that the FCC did not meet the requirements of the Administrative Procedure Act because the FCC failed to adequately explain why APC, Cox and Omnipoint were entitled to awards and the other applicants were not. We object to the language in the GATT legislation because, by denying our right to have the FCC's decision reviewed, it sweeps aside this question of whether or not the FCC violated these requirements and employed an arbitrary process in awarding the preferences.

We believe that APC, Cox, and Omnipoint support the legislation because they, too, are confident that they will lose their preference awards on appeal. So far, their tactics are working. After twice recognizing that our appeal should be expedited so that it could be completed prior to the FCC's broadband PCS auction, the court now has placed our appeal in abeyance pending congressional resolution of the GATT debate.

Section 13(D) of Section 801 of the GATT implementing legislation establishes requirements for future awards of Pioneer Preferences by the FCC. Unlike Section 13(E) concerning the three prior awards and unlike the procedures followed by the FCC in granting those awards, Section 13(D) requires the FCC to take steps to ensure a reasonable and proper result for future preferences. Section 13(D) requires that the FCC "specify the procedures and criteria by which the significance of [pioneering] contributions will be determined, after an opportunity for review and verification by experts in the radio sciences drawn from among persons who are not employees of the Commission or by [sic] any applicant for such preferential treatment." In addition, Section 13(D) requires that the FCC "include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses." This recognition that existing FCC procedures for granting preferences are inadequate and must be augmented by these eminently sound safeguards for impartiality and fairness is totally inconsistent with, and clearly reveals the flawed nature of, the Section 13(E) rubber stamping of the three FCC awards that were granted without these safeguards.

In short, the pioneer preference provisions of the proposed legislation threaten to distort major telecommunications markets, shortchange American taxpayers, and negate the fundamental rights of all parties to obtain judicial and administrative review of far-reaching and controversial federal agency decisions.

Federal Revenues Under Alternative Pioneer Preference Formulas

	Revenues generated (in millions)	Revenues foregone (in millions)	Discount (percent)
Auction	\$2,777		
H.R. 4700	2,499	278	10
FCC	2,251	526	19
GATT	1,846	931	34

Present value of GATT discount to pioneer preference recipients: Dollar discount in millions, \$1,582; percent discount, 57 percent.

The CHAIRMAN. Thank you very much. Mr. Smith.

STATEMENT OF DOUGLAS G. SMITH, PRESIDENT, OMNIPPOINT CORP.

Mr. SMITH. Good morning. My name is Douglas Smith. I am the president of Omnipoint Corp., and I thank you very much for having the opportunity to come here to talk about what I believe is one of the best programs the FCC ever initiated—it has reaped enormous benefits to the public—and to try to tell you a little bit about what this process has been like for the past 5 years and what the benefits are to the public, to the Government, to the consumers, and also tell you a little bit about who Omnipoint is, and at least our perspective of what happened with the GATT legislation because, quite frankly, the notion that the pioneers came in and argued to be charged 85 percent to pay something which we were literally promised—and I will walk you through it as much as you would like—promised for free repeatedly, we are here to settle. We are here to get on. I am not a lawyer. We are here to get on with the business of building PCS. We accepted this legislation, we did not lobby for it.

Now, let me tell you a little bit about the pioneer preference program. Let me first of all tell you about Omnipoint, because most people probably do not know who we are. We are not a giant company. We are a high-technology company based in Colorado Springs. We are about 130 people now. When we first started, there was no way for a small company to get a license. There was no mechanism to get to a license. The types of mechanisms people talked about were either comparative hearings, which had been abandoned as being too litigious and had gone to lotteries so that random chance was the mechanism of getting any kind of right to use your own idea, the other thing that was being discussed at that time was auction authority. And one of the least understood facts about the entire pioneers preference program is that it first was officially mentioned by the FCC in hearings in Congress at the time they were seeking auction authority. And why did they present it? Specifically under questioning by Congressmen as to how in a world of auctions are innovators going to get a chance to use their own innovations. Because if the only reward you have at the end of 5 years of innovation is you get to go and try outbid the giant telephone companies of the world to use your own idea, no one will

innovate. And so under questioning by Congressmen, both Democrats and Republicans, then Chairman Sikes said we intend to introduce a program on pioneer's preferences.

And when they did introduce it, it was just a few months later they introduced the first auction legislation. They were hand in glove. It was not just random chance they were trying say should no longer be the method of awarding licenses. They were trying to say it should not just be money at the end of the story. It should also award innovators.

When Omnipoint first started, I and the original key engineers worked without pay for over 2½ years. Those employees and I still run the company. There have been lots of accusations over the last few weeks about scandal and robber barons. At this point, our employees just find it amusing to think that somebody thinks they are robber barons. We are the ones that took the risks. The Government did not give us one dime—one dime—of money. What they held out was they said if you have ideas that we decide are innovative, we will guarantee you a license, "not subject to competing applications." Now, why did they put that in there? Because if you are trying to do either lotteries or auction legislation, if there is no competing applications there is no competing bids in an auction, there is no price.

Now, lotteries were not just lotteries. It was not just random chance. Lotteries were private auctions. What happened was the Government said why should human beings use judgment to award licenses because lotteries will work? Well, lotteries ended up having tens—tens—of thousands of applications generated. The last time lotteries were primarily used was for a 220 megahertz allocation for something called 5 kilohertz narrow-band channels. In the first 48 hours, they received 60,000 applications, lottery applications.

Now, all throughout the cellular, after the first 100 licenses, they were all awarded by lotteries—lotteries. Are they in the hands of 734 independent companies? No. Nine companies control 90 percent of all the top cellular subscribers—nine companies. How did they get them? They did not win them in the lotteries. They bought them. These were private auctions. They were referred to as private auctions. This is why public auctions came into legislation.

Now, what were the odds that Pacific Bell would be the 1 in 60,000 lottery winner to win the Los Angeles MTA? You tell me. So, what did they anticipate doing? What did every party who would not be selected as a pioneer know that they would have to do? They knew that they would have to buy the license from the lottery winner. So, nothing changed, absolutely nothing changed, in going from lotteries to auction legislation vis-a-vis competitive distortion, competitive advantage. No one is setting a price. No one is setting a price on these licenses. Whoever pays the prices, whoever wins it, decided that was the bid. These are auctions. If you pay the price, you must have decided it was worthwhile. Nothing changed in the competitive distortion, nothing changed in competitive dynamics, just because you went from lotteries to auctions.

The issue of pioneers preferences was to reward innovation. They debated it for 2 years before they enacted the legislation. And let me point to you, take a look at this chart, what people have to real-

ize is that to use an innovation in the RF world it is not good enough just to invent it. It is not good enough just to get a patent. The FCC debated this with 60 companies commenting over a 2-year period, and decided patents did not work. It was a great idea in theory, but it does not get you a license. And so let me go back in time. Cellular took 14 years to go from the first allocation decision to the licenses. How many companies asked for an experimental license during that entire period? Three. Three companies.

Now, when personal communications first came up as an idea in January 1989, and I want everybody to remember we have been at this 5 years, hundreds of companies have commented, thousands of pages, this has been the most open review process. There have been more bites at this apple than any proceeding in the history of the FCC.

Now, let me walk you through it. When they first brought up the idea of personal communications in January 1989, for the first 15 months how many companies applied for experimental licenses? Five. When the pioneer's preference proposal first came out, in the following 16 months 105 companies sought experimental licenses. This was unprecedented. Newsletters came into existence talking about just the fact that suddenly all this innovation. At the time of the PCS rulemaking they acknowledged it was the pioneer's preference that brought all this out. When did the spikes occur, in terms of experimental requests? They were all in relationship to pioneer's preference policy statements vis-a-vis PCS by the Federal Communications Commission. They were not in response to things like NOI's, NPRM's, even decisions. That was not what generated the experimentation. It was the possibility of getting a license.

Now, I could quote to you, and I will if you care to in the question and answer, the literal statements of the FCC policy at each step of the way, at each step of the way. Specifically, it was there to reduce the risk to the financial community to attract venture capital, to attract large corporations. Motorola, United Parcel Service, lobbied heavily for the pioneer's preference. These are not small companies. The point was to reward innovation, and at each step of the way the FCC, on reconsideration, on comment, always said the public policy issue was there.

Now, let us go back and talk about what was PCS. When the pioneers started there was no PCS. PCS is a direct competitor to cellular and to wire-line telephone. There was no one coming down to the FCC saying from the cellular industry I wish you would create competition to us. The CITA, the first NOI, said there is no need for PCS. There was no specification. When we started to work on the specifics 1850 to 1990 PCS, there were only a handful of us working on it. The consensus was it would never work. The consensus was the frequencies were too high, you would never get the technology to work into a handset, you did not need it. This band is encumbered by 10,000 point-to-point microwave towers. How were you going to deal with them.

These were the issues as the pioneers came in. Almost every major policy issue in personal communications, from where the spectrum is to the notion it will be 30-megahertz licenses to the size of the territory, were all the ideas of pioneers. You cannot patent those ideas. Everyone benefits from that. Everyone benefits

from that. And the Commission acknowledged that the fact that PCS came into existence in 4 years instead of 14 years was specifically helped by the pioneer's preference program.

Now, this is not the only docket of pioneers. They have ruled on this on seven occasions. The consumers of this country are going to get competition in this docket, but low Earth orbit satellites, that was the first pioneer's preference award. Narrow-band two-way paging, that was another one. Wireless cable. This is a program designed to draw innovators into the fray, to let them create the new technologies, and now the new technologies that will increase the value of the spectrum so when it is sold to other people the Government is now reaping the money, because if you do not have this program, if you kill it off, ask yourself who in the future is going to risk investment solely to say at the end of the day we have to outbid the giants just to use the shelf space, the shelf space in the only store in the country, the Government owns the shelf space in the store, it is called radio spectrum, if we want to offer a service we have to get a license. And if you do not have something like this you are going to be penalized.

Now, let me talk a little bit about GATT. We were not just promised a tentative award. We were awarded a tentative award in October 1992, over 2 years ago. That was the official ruling, a tentative award. Now, Omnipoint never used a lobbyist, we did not even have a corporate lawyer. You can look. All we did was file experimental reports.

Now, the process went through comment, reply, reply-comment, comment-reply comment, et cetera. When the auction authority came in in August 1993, the legislation specifically said pioneer's preferences, nothing should prevent the FCC from continuing them, and they will be on a separate track. Now, FCC, though, said wait a minute. Given this new auction authority, we had better hold a special NPRM, a special notice of proposed rulemaking, to discuss does auctions change anything vis-a-vis pioneers.

Now, we were supposed to have been given our award according to the rules finalized on September 23, 1993, but we weren't. They held a special rulemaking, threw it open, and said what do you think? What does the industry think we ought to do now that there are auctions? Should we change the rule? Should we take the pioneer's preferences away from them? Should we charge for them? And they specifically said at that time, we do not believe we have the legal authority to charge. But we are open to having somebody convince us otherwise. There were lots of companies that commented, something on the order of 50—84 percent of them said whatever you do, keep the program, and it would be outrageous to retroactively change it. I could quote you Pacific Bell's comments, I could quote you Qualcomm's comments, saying do not change this program, do not be retroactive.

The Commission when they came out, when they came out with the decision in December, it was unambiguous, in fact to the point where if you read the Commissioners' own statements they said some people may think this is a giveaway, but we are having two competing goods here. The pioneers were caught in a transition. I could literally cite you the statements, if you would like, and one of the Commissioners said by doing this, we have finalized this de-

cision, they are granted, and we have now given the pioneers what they expected to get.

And put yourself in our shoes. Put the converse in, because now watch what happens. Two or three losing pioneers mount a massive lobbying campaign to try to change this, to try to change this. Omnipoint did not come down to the Hill. We did not come down here in this period trying to get Congressmen to charge us 85 or 90 percent. And when the Commission finally changed the rules and said now we are going to charge 90 percent, they said you are going to have 30 days to pay it, and it is 90 percent of whatever the largest telecom companies in the world bid.

Now, let me put this in context for you because people are focusing on this issue, they are focusing on it nationally. Ladies and gentlemen, there are 2,000 PCS licenses—2,000. We are talking about three here. We are talking about one-tenth of 1 percent of the spectrum—we are talking about one-tenth of 1 percent of the licenses, three-tenths of 1 percent of the spectrum, 5 percent of the POPS times the spectrum.

Now, 1,000—1,000 of those 2,000 licenses—have been set aside in something called the entrepreneurs band. This decision came out in approximately June or July, roughly 30 days before the pioneers were reversed and told they would have come up with 90 percent. And what was that decision? That decision was that those 1,000 licenses—all right—will have 10 years to pay. They will not have to bid subject to the largest companies, and they will have up to 25 percent discounts in 5 years of interest.

The New York Times said the FCC estimate of this would result in a 60-percent discount, meaning you pay 40 cents on the dollar, and they are eligible to get the exact same amount of bandwidth as the pioneers in the exact same territories in simultaneous auctions that will be held later this year. Forty cents on the dollar is what they are offered, 1,000 licenses, they do not have to do any pioneering work, and I am not opposing this, by the way. We have commented repeatedly that the policies that they are trying to enact there have their own justification. But there was no need to change it for the pioneers. And so by saying we are charged 90 percent and give us 30 days—30 days—to pay, how are we supposed to come up with that money?

Now, we had nothing to do with it being in GATT. I first read about it in a newsletter that was published in June or July that it was going to be put into GATT, and yes, we came down here and said why are you doing this to us? What did we do? We were the ones chosen. The pioneers were the ones chosen by the Government for having rewarded us, and now we are being taken around as if we did something wrong. We did nothing wrong, and yes, we came in here, and yes, we said 90 percent is outrageous and a 30-day payment is outrageous. We absolutely said that. But we proposed a royalty screen, and nobody listened to us. We did not get what we wanted.

Vice President Gore said charge 80 percent. The FCC said charge 90 percent. There was a question of 80 or 90 percent of what? You have heard the comments. Somehow they came out at 85 percent of the top 20, and these 20 are large, large, large territories, by the

way. We will get into, I am sure, the question of what values these are worth.

The CHAIRMAN. Well, I hope we can get into the questioning. Will you wind up now? [Laughter.]

Mr. SMITH. Well, I apologize for running over, but the point is the GATT legislation gives us 5 years to pay, and it ends a process that has been going on for years, the people have had a dozen bites. It does not take away the rights of any other of the pioneers that lost. They can still appeal their recons, go to the courts, et cetera. So, the reason why we accepted the GATT legislation is because we are businessmen. We wanted to get on with billing it. And I am sorry, I will close on that, because we support this legislation because it gets on with the business of creating PCS.

The CHAIRMAN. Thank you, sir. Mr. Schelle.

STATEMENT OF WAYNE SCHELLE, CHAIRMAN, AMERICAN PCS

Mr. SCHELLE. Mr. Chairman, Senators, thank you for the opportunity to speak with you today. I look forward to this experience.

More than 5 years ago, my wife and I formed American Personal Communications. I had a dream that there should be a new wireless industry that should follow behind cellular, that it should be for every man and every woman and for children. It should be cheap, should be small, should be light. It should not only be two-way voice but data oriented information services, et cetera. I had been an admirer of cellular, but I thought that there was an opportunity for competition here in the United States. And I also thought that this should be an American industry, that with this American industry that I had this dream about could export American products and service providers throughout the world. And I thought that this service might eventually reach 150 million people. I also thought, as I got into it, that this industry would have the opportunity to create 300,000 new quality jobs, and that the industry in the next 10 to 15 years would be a \$200 billion industry. And I got very excited, and I still am very excited. To have an opportunity to play a part in the development of an industry like that is fantastic.

We started collecting a small but very bright innovative team, and we applied for the first experimental license in the United States, and we received it in February 1990. At that time, the biggest problem was where will there be spectrum. And many people said there is no spectrum. Other people said there is no need for this industry. Cellular will do it all. And as we searched for spectrum, and you know, there was in the air that the Government owned 300 megahertz of spectrum and that sometime that that was going to be broken up and made available to private industry, and that had been spoken about for a number of years. We felt that now was the time to find spectrum, and we found that the 2 gigahertz spectrum existed, was underutilized, and we developed a software technology where we could avoid interference for the fixed microwave users. And, Mr. Chairman, you had a hearing on that 2 years ago, on that subject, and I think that worked out to everyone's satisfaction. And both the utilities and ourselves are satisfied that we have it equitable, and we thank you for presiding over that.

When the pioneer preference policy was announced, we were the first applicant, because we had found the spectrum. We found 140 megahertz of spectrum that was usable, and we found where there might be interference that we developed a technology that would not make any interference possible; in fact, take away the interference. After we applied for the pioneer preference we did experiment after experiment. We bought 12 million dollars' worth of hardware. In fact, we bought a Qualcomm system and experimented with the various technologies in Washington and Baltimore. We asked in our pioneer preference for Washington and Baltimore area. It looks like now we should have asked for maybe a bigger area, but we are satisfied.

We experimented. We relied on 12 different times the FCC unanimously confirmed and affirmed and applied pioneer preference policy—12 times. And what that meant to me as a businessman was every time the FCC—I am looking at the horizon, and I am saying is it clear or is it stormy out there. Every time the FCC affirmed and reaffirmed, I spent money. I committed investment money. I committed high-risk capital. And the capital that I risked, I found, after discussing with a number of companies and institutions, I found that the Washington Post was willing to be our limited partner, and a great deal of the money that we spent came from the Washington Post, some from us.

We put all the confidential information that we developed on the record, because we believed in the pioneer preference policy. We still do. It is great. It allows innovators like Doug and ourselves to stand up and come out of our garages and come out of small work areas and make a significant contribution to our country, to the technology of our country. Technology should be the U.S. premiere export item.

Every time we spent more money we got further along in the process. We hired people. We now have over 50 people, over 100 consultant and contractual people. These funds were at risk. We have invested not only money, but over 5 years of our lives. I want you to know that the auction legislation clearly contained—and I know you know it—wording that said the Government and the FCC would be able to continue the pioneer policy and to make awards, and I have the actual quotes from the auction legislation, and I think you and your staff played a major role in that.

After the awards had been finalized in December and January of 1993–94, we began to be attacked. By the way, these are the copies of our quarterly reports. Every applicant for a pioneer preference was required to make quarterly reports. You can see that we took it quite seriously, and they are 50 quarterly reports that we have filed. We have had to reproduce many of them because of our position in the industry. People have asked for reproductions. And our legal briefs, by the way, are almost that high also, the legal pleadings that we have had to file.

We have been attacked incessantly, almost weekly, by either big monopolist giants in the telecommunications industry such as Pacific Telesis. It is outrageous that we have to be harassed and attacked and litigated. We are a legitimate small company pioneer competing against very big guys, and they fight very well. They are

very adept at fighting and fighting forever. That is why the GATT legislation is attractive to us, because it provides finality.

We were shocked when the FCC changed its policy. I know that several of the people, several of those companies, lobbied very hard to get the FCC to change. We were shocked, we were disappointed, and when we learned that we might be included in GATT our first reaction was negative because we were still hoping for a better agreement. We decided, after further discussions among ourselves, we better take it because we may go on forever in this litigation and pleadings and protest process that we have been through. The finality of GATT is very attractive to us as a small player because we just cannot compete in the litigation and protest market. They are really good at that.

I just want to say that my 5 years have been exciting years. I had an opportunity to chair our industry association for 2 years. This year I was awarded the Pioneer of the Year Award. When I got it, someone said you only get 10 percent of it, and you have to give 90 percent back. [Laughter.]

But these years have been exciting, productive, and to see the United States preeminent in this wireless technology is what it is worth to me. If I never make any money, and I do not know if I ever will out of this opportunity, to have the United States shortcut from the idea to the marketplace where cellular took 14 years and this has taken 4 shows that I think the pioneer policy worked and worked well for the country and is an excellent public policy, and I hope it will be continued.

Thank you for listening to me, Senator Hollings, and I will be happy to answer any questions.

[The prepared statement of Mr. Schelle follows:]

PREPARED STATEMENT OF WAYNE N. SCHELLE

My name is Wayne Schelle. I am the chairman and principal stockholder of American Personal Communications.

Five and a half years ago, I founded APC, with Elaine Schelle, my wife, as the only other stockholder. We were the first to apply for and receive a broadband experimental PCS license from the FCC. Our idea was to launch the next generation of cellular, except this time it would be wireless services for everyman and everywoman, not just businesses and the well-to-do. My vision for this new technology, called "PCS," was that it would be cheaper, more convenient, of higher technical quality and providing more services. It would offer American consumers a choice and create new competition for the telephone companies.

To realize this goal, we assembled a team of mostly young people of great ingenuity, commitment and creativity, many of whom became shareholders.

We immediately set out to tackle the core problem, which was lack of spectrum. At that time, many believed there was no spectrum available in this country for PCS, and that PCS would not be possible for some 15 years. Barclay Jones, our Vice President for Engineering and, I believe, the finest technologist in his field, led our effort to solve this key issue. We located the right spectrum—the 2 GHz spectrum which the FCC now has authorized for PCS—and invented the technology to use it effectively. That technology, which we call PATHGUARD, dynamically adjusts PCS base station frequency use so that it doesn't interfere with microwave incumbents that currently operate in that spectrum and so that it makes maximum use of that spectrum. Motorola and Northern Telecom already plan to use this technology, which we have licensed on reasonable and open terms and at a fee that does not even cover our costs. We expect other equipment manufacturers to license PATHGUARD as well and that its use will be widespread.

You, Mr. Chairman, held a hearing two years ago, where I testified, to address the concerns of these microwave incumbents. Our breakthrough technology solves your concerns because it enables PCS to use this spectrum without interfering with existing users.

These and our other innovations, for which we received our pioneer preference, would not have been possible without two things—high-risk capital funding and the promise of a reward or an incentive for success. Early on, we saw that solving the central technology issues was going to require a lot of money—much more than we had. The Washington Post Company was willing to make the large, high-risk investment as our limited partner.

The other critical factor was the Commission's pioneer preference policy. That policy held out to us and some 100 other pioneer applicants, in this and other services, the prospect of obtaining a license as a reward for breakthrough innovations. At that time, FCC licenses were awarded for free—on the basis of the public interest. There were no auctions.

So in reliance on the guarantee of a free license, we persevered in our high-risk, expensive and innovative course, and put into the public record thousands of pages of data and information that otherwise we would have kept to ourselves or not compiled at all.

The preference procedures were lengthy and intense, but let me summarize: our qualifications to become a pioneer were subjected to over 10 different rounds of public comment and to numerous checkpoints of FCC review.

The FCC awarded us a tentative preference in the fall of 1992. It was due to finalize that award when, in the summer of 1993, Congress passed the spectrum auction legislation. At that time Congress carefully considered the preference policy and expressly authorized the Commission to continue to award preferences, specifying that they should be exempted from the auction process. To quote:

"Nothing in this subsection, or in the use of competitive bidding, shall * * * be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology."

The Senate legislative history made the same point:

"The FCC has been undertaking efforts to encourage the provision of new technologies and services by entrepreneurs and inventors. Consistent with the FCC's statutory obligations and its prior efforts in this regard, the Committee included language in this subsection which states that nothing prevents the FCC from awarding licenses to companies or individuals who make significant contributions to the development of a new telecommunications service or technology."

There was a recognition that the government should honor its word to pioneers who had already done all the work required by the FCC to qualify for a preference.

The FCC also launched a special reconsideration proceeding just to consider the impact of the auction legislation on us pioneers. Then, at the end of last year the FCC finalized our preference grants and the promise of a free license, citing not only our technological contributions but also our reliance on the preference policy and the inequity of reneging on it. This was the twelfth time the FCC had unanimously voted favorably on the pioneer preference policy.

Then something highly unusual happened. Some of the bore losers, who had tried for preferences but had been turned down, took the FCC's decision to court, challenging it on the grounds of an economic argument that their economic experts subsequently abandoned. But in the meantime, the FCC was persuaded by the argument, pulled the case back from the court and imposed fees on us pioneers using a terribly unfair formula. We are convinced that the Court will rule those fees to be invalid for several reasons. The FCC simply does not have general taxing authority. Congress is very precise when it gives the FCC the authority to levy fees, and the auction legislation clearly precluded the FCC from levying fees on pioneers. Thus, if the FCC's decision were struck down and there was no GATT legislation requiring payments, the government would not receive any fees at all from pioneers.

For reasons that other witnesses will have to speak to, legislative authority to charge fees to pioneers was included in GATT—at least \$530 million, and OMB thinks it will be \$1.5 billion. We have acquiesced in the payment formula imposed on us by GATT, though reluctantly. But GATT will at least enable us to roll out the new services that we have fought so hard to get started. For the public, too, it will be worth it.

You see, the benefits that we foresaw PCS would bring to this country are truly outstanding. PCS will accomplish the service benefits to the American public that we dreamed of over five years ago. It will create 300,000 good new jobs. It will boost American service and equipment exports as part of a \$200 billion industry within a decade. It will bring competition to the cellular duopolies around the country that have kept prices to the public artificially high. It will bring new competition, ultimately, to the conventional telephone monopolies as well. It will yield substantial

auction revenues to the U.S. Treasury, and heavy fees from pioneers that otherwise the Treasury would not receive.

We pioneers are proud to have helped create these benefits. And we are confident that our efforts will have played an important part in a dynamic, competitive new service that will serve the American public well.

The FCC's Development and 12-Time Reaffirmation of the Preference Policy

Date	Event
July 14, 1989	Washington Center for Public Policy Research proposes preference policy.
November 29, 1989	APC applies for first PCS experimental license in U.S.
April 12, 1990	FCC issues Notice of Proposed Rulemaking proposing pioneer preference policy.
May 3, 1990	APC applies for first broadband PCS experimental license in U.S.
February 1991	NTIA issues Spectrum Management reporting supporting license auctions.
April 9, 1991	FCC unanimously adopts preference policy.
May 3, 1991	APC proposes PCS spectrum allocation and rules.
October 24, 1991	FCC releases PCS Policy Statement.
June 16, 1992	FCC unanimously awards preference to VITA in low-earth orbit satellite service.
July 16, 1992	FCC unanimously awards preference to Mtel in narrowband PCS.
August 5, 1992	FCC unanimously issues preference decision in "big" LEO satellite docket.
August 14, 1992	FCC releases PCS Notice of Proposed Rule Making and seeks comment on the use of auction techniques to assign PCS licenses.
October 8, 1992	FCC unanimously awards preferences to APC, Cox and Omnipoint for broadband PCS.
December 10, 1992	FCC unanimously awards preference to Suite 12 Group for 28 GHz wireless cable.
January 14, 1993	FCC unanimously affirms preference award to VITA.
January 29, 1993	Pacific Bell again supports APC's preference request.
February 4, 1993	Senate Bill 335 introduced to grant FCC authority to issue licenses by auction on experimental basis.
March 8, 1993	FCC unanimously affirms preference policy on further reconsideration.
June 24, 1993	FCC unanimously affirms award of preference to Mtel.
October 21, 1993	Divided FCC initiates rulemaking proceeding to assess preference policy in light of auction authority; holds that preference policy "exempts pioneer's preference licenses from payment for a license so issued".
November 15-22, 1993	Industry comments overwhelmingly favor finalizing PCS pioneer preference (see attached table).
January 28, 1994	FCC unanimously determines to finalize PCS pioneer preferences without requiring payment.
February 4, 1994	FCC unanimously affirms award of preferences to APC, Cox and Omnipoint without requiring payment.
June 3, 1994	FCC General Counsel responds to Oversight Committee inquiry on preferences; affirms propriety of awards and process.
June 14, 1994	Vice President Gore supports 80 percent payment requirement in Detroit speech.
June 30, 1994	H.R. 4700 introduced; would require 90 percent payment but of "comparable licenses".
July 8, 1994	FCC seeks remand of preference appeal, stating that it now intends to require payments of pioneers.
July 13, 1994	FCC issues order requiring 90 percent payment from narrowband PCS pioneer Mtel.

The FCC's Development and 12-Time Reaffirmation of the Preference Policy—Continued

Date	Event
August 9, 1994	FCC issues order requiring 90 percent payments from broadband PCS pioneers.
September 30, 1994	GATT introduced with preference policy compromise as a funding mechanism.

The CHAIRMAN. Thank you very much. Mr. Kelley.

STATEMENT OF KEVIN KELLEY, VICE PRESIDENT, EXTERNAL AFFAIRS, QUALCOMM, INC.

Mr. KELLEY. Thank you, Mr. Chairman.

I am the vice president of QUALCOMM, Inc. QUALCOMM was founded in 1985, about the same time as Omnipoint and just slightly earlier than APC. It is one of the fastest growing and most successful wireless telecommunications companies in the world. We have 2,000 employees in San Diego and throughout the world.

Let me just say very quickly what our positions are.

QUALCOMM does support GATT. We are in a lot of international markets. But we do not support this particular section.

We also support the pioneer's preference concept.

Senator PACKWOOD. Can I just ask a question?

Mr. KELLEY. Sure.

Senator PACKWOOD. Because we have to vote on GATT, and the chairman has said this several times, up and down. There is no "support, but for this section." It is yes or no, altogether.

Mr. KELLEY. I understand that, Senator.

Senator PACKWOOD. And your position is yes?

Mr. KELLEY. You know, I do not know the answer to that.

Senator PACKWOOD. OK. [Laughter.]

Mr. KELLEY. That is what makes this a very difficult situation for us.

We also support the pioneer's preference concept, even when auctions are used.

However, we do believe that the FCC's administration of the pioneer's preference policy has been seriously flawed. We think it is wrong to use this bill—this important bill—to take away fundamental rights from aggrieved parties in unrelated administrative and judicial processes.

We also think it is wrong to use this legislation to interfere with the Commission's processing of the pending pioneer's preference applications.

I just want to tell you a little bit about QUALCOMM and our role in this proceeding, and conclude with a couple of other remarks.

In 1988, QUALCOMM introduced OmniTRAC's, the satellite-based communications system, to provide two-way data messaging position location services to truck users in the United States and around the world. Today Omni Tracks is the largest satellite-based mobile data system in the world. We designed it and we operate it.

Shortly after the introduction of OmniTRAC's, QUALCOMM began to apply our digital expertise to terrestrial wireless systems. In 1988, we announced the development of an end-to-end digital wireless communications system using code division multiple access, CDMA, technology.

Since announcing the development of this system, QUALCOMM has joined with leading carriers and manufacturers to field test its system in a wide variety of conditions and locations. These tests have consistently demonstrated that CDMA increases system capacity and reliability, improves voice quality, and requires far less power than existing and proposed wireless systems.

Now, what I am going to tell you now is very important. In 1993, the Telecommunications Industry Association, TIA, the standardsetting body for the cellular industry, adopted a new North American digital cellular standard. It was based on QUALCOMM's CDMA technology.

In November 1993, QUALCOMM and Motorola jointly submitted a proposed standard based on our technology to the Joint Technical Committee, JTC, that is developing standards for PCS. Subsequently, AT&T and other leading equipment manufacturers endorsed this proposed standard.

This standard is now well on its way to being one of the two leading standards for PCS in the United States.

Another group, led by the European companies Ericsson, Alcatel, and Siemens, are advocating another standard, which is based on the PCS awards that were used in Europe.

So, what we have is an industry moving toward two digital standards.

On May 4, 1992, we did file a request for a pioneer's preference with the FCC. We described our system in detail—much more detail than any other applicants supplied the Commission. In subsequent Commission filings, QUALCOMM, APC—as Mr. Schelle mentioned—MCI, Time-Warner, and Cox have submitted reports to the Commission validating the capabilities of the technology.

In November 1992, in the much discussed tentative decision, the FCC denied our preference, saying, strangely enough, there was no evidence in the record that QUALCOMM had ever developed and tested a system at 2 gigahertz, when Mr. Schelle was operating a QUALCOMM system a couple of miles away.

Well, in the final order, the third report and order, the Christmas Eve order, the Commission recognized the error in its earlier decision and invented a new reason for denying our preference. They said in an exercise in corporate mind reading that what QUALCOMM was really doing was developing a technology for cellular.

It is important to note that the only complete system we ever sold, even to this day, is the one we sold to Mr. Schelle, at 1,800 megahertz, which is not a cellular system.

In March of this year, we filed a petition for reconsideration of that award, and the Commission has yet to act on our petition.

In the petition, we also ask the Commission to rescind the preference grant to Omnipoint, because of our belief that they had failed to demonstrate the technical feasibility of any of the attributes that form the basis of their preference grant. Perhaps most important—and this is very important—Omnipoint never revealed the technical details of its supposed pioneering technology to the Commission.

My question is: How is the Commission supposed to enforce its requirement that Omnipoint use the technology that form the basis

of its preference if there is nothing in the Commission's record that describes the technology?

I just note in this regard that even at this late day, Omnipoint is refusing to make public the details of its technology so all participants in the standardsetting process can evaluate it.

Where is the industry now that the Commission is about to start auctioning this valuable spectrum?

It has two viable standards to choose from—one based on QUALCOMM's CDMA technology, and another based on the European digital standard, GSM. Nothing from the pioneers.

Let me just close by noting that last Friday, Electronics Buyers News reported that Omnipoint and American Personal Communications have selected Northern Telecom's European GSM technology for their PCS systems. I think it is ironic that American tax dollars are being used to support the import of European technology into the United States.

Thank you.

The CHAIRMAN. Thank you very much. Mr. Fein.

STATEMENT OF BRUCE FEIN, ATTORNEY AT LAW AND FORMER GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

Mr. FEIN. Thank you, Mr. Chairman, members of the committee.

My name is Bruce Fein. I am former General Counsel of the Federal Communications Commission.

Some of the comments by the panelists remind me of the remark that President Harry Truman once made: "If you can't stand the heat, get out of the kitchen." And I do not see any David Copperfields on this panel, who seem to be totally able to get their way in Washington, DC, or, indeed, into the GATT-implementing legislation.

Let me first address the claim that this pioneer preference is indispensable to encouraging technological innovation. I think, as Jeremy Bentham would say, "that is nothing but nonsense on stilts."

Innovation occurs all the time naturally in free marketplaces. Because the innovation in free marketplaces makes a commodity, makes spectrum, makes a service more valuable to the user. That is why it is innovative.

You do not need any special deals in pioneer preferences for bidding on oil and gas leases in the expectation that that is the only way in which you get new development in oil and gas technology. The competitive bidding process itself encourages the innovation. Because to the innovator, the spectrum is worth more. So, he is able to bid higher and capture the license.

Indeed, with regard to PCS itself, there are 102 licenses for unrestricted 30 megahertz broadband spectrum. And the Commission, after these 3, has decided—it is not required to under this statute—has decided to make 99 of them available through auction.

Indeed, those auctions will begin December 5, and run probably through January.

The Commission did not adopt that posture because it thought that auctioning off the licenses would deter innovation.

Indeed, going the competitive route on those licenses really substantiates that if these three that have been awarded through the pioneer's mechanism at the outset were set for competitive bidding, that would encourage all the innovation that would be justified.

Now, let us take this possibility. Suppose the Congress decides by statute, instead of through 801, to throw open the pioneer licenses for competitive bidding. They then say, "Well, we will have some restitution for the three pioneers for any moneys expended that would not clearly have been expended otherwise."

If they genuinely have innovation, they will bid higher than anyone else for those licenses. Because they would be able to utilize them in a more efficient and valuable way. That is the true test of what innovation is.

Innovation cannot be determined just by looking at something in a lab. We know AT&T developed a picture phone in the 1962 World's Fair I think. And it still is not in the marketplace. Because to be genuinely innovative you have got to produce a technology that is available to consumers at a price that they are willing to pay.

It is not innovative if it sits on the shelf. That is really a waste of resources.

So, the whole idea that pioneer preference program is just the centerpiece of our ability to innovate I think just makes no sense at all. There are countless areas of U.S. business where innovation flourishes without any of these kinds of programs—and the computer industry being one.

Now, let me address the question of the fairness and equity, the promise made to these three pioneers. It is very dubious to suggest that they received a promise, when all the decisions that were made—even to this very date—were open to reconsideration. And reconsideration is no novelty in the annals of the FCC. It happens all the time.

And as you pointed out, Mr. Chairman, it occurred recently with regard to cable rates. Not only reconsideration, but all those licenses were known to be subject to judicial review. And indeed there are challenges at present in the U.S. Court of Appeals. And it certainly is no novelty in the FCC annals to have courts of appeals overturn their rulings.

And I would wager that there are none of those three pioneers who could take their so-called tentative licenses into a bank today and receive a loan with the security of that license. It is recognized in the marketplace that those kinds of licenses, subject to challenge, are very, very fragile upon which to make strong business decisions.

Now, what has the FCC done, and how has Congress responded in 801—or proposed to respond?

The FCC, in reconsideration, in the ordinary course of the processes that have been established by Congress that are time honored for doing fairness and justice and procedural due process, it reconsidered an initial—if you want to call it—tentative grant to these three pioneers.

Now, one of the reasons I think it did reconsider was because at the particular time when they made a strong statement of affirmation, of granting the pioneers a preference, they had not closely ex-

amined how the 99 other PCS licenses would be auctioned off and, indeed, how valuable those might be.

One, of course, major concern to the Commission, is to ensure competitive balance in the marketplace. And if the competition suggested that there would be billions bid, to permit the three pioneers to come in for free, would be a gross competitive distortion and, indeed, upset one of its primary missions entrusted to it by the Congress of the United States—namely, to ensure competition in telecommunications markets.

The Commission decided on a formula which I still think is probably within its authority, but not the best formula that can be devised. Because Congress can supersede the FCC rulings, as I will propose shortly.

It established a basic mechanism to charge about 90 percent of what might come in through the competitive bidding process for the top 10 markets. However, its decision is still subject to reconsideration and judicial review. 801 is an enormous inroad on the FCC decision. And, indeed, I think is a very infelicitous response to what the FCC did.

Section 801 not only cuts off reconsideration, cuts off judicial review that are of inestimable benefit to those three pioneers—because—one of the reasons why they do not want to subject their licenses to those proceedings is because they fear they will lose them.

No other beneficiary of the pioneer program has that benefit in 801. That is, there are other pioneers—not the 30 megahertz pioneer PCS licenses—but other pioneers whose licenses were every bit as much firm as these three in August 1993, when Congress enacted the competitive auction provision.

In 801, none of those others, who will now be subject to some kind of fee—although the formula has not been established by the FCC—none of those others have petitions for reconsideration curtailed or judicial review curtailed. These three and these three only.

Now, the FCC formula, I think, reasonably good estimates would suggest—excuse me—the 801 formula, reasonably good estimates would suggest—and on this I would concur with Pactel—that the Government will lose \$1 to \$2 billion in the fair market value of these licenses.

Now, this is in a provision that purports to be a revenue raiser.

Name me a revenue raiser that loses about \$1 to \$2 billion.

That could only be understood with the bureaucratic jargon of Washington, DC. Most people would conceive of that as being a loss.

Now, if there is, by the administration and this Congress—and here I would like to address your question that was raised in your opening, Senator Packwood—if there is real fear that the challenge to the FCC 90-percent formula would be successful, 801 could have been drafted to state either the FCC has authority to impose those charges or Congress could act retroactively.

Congress repeatedly acts retroactively. Indeed, in the GATT legislation it has done so with regard to pension rules that apply retroactively to determine underfunding and how quickly you have to overcome the underfunding.

So, retroactivity is no novelty. I will experience and many of you may—when you pay retroactive income taxes that were enacted by the 103d Congress.

So, if Congress retroactively said, we are going to throw these three pioneer licenses open to competitive bids, we will give the three pioneers a restitution right in the Court of Claims, so if they can show that they made expenditures, as has been suggested, in reliance upon a free license, they can recapture those—but then the marketplace is fair. It is evenhanded. Everybody comes in on a competitive playing field. And the American people are not cheated. They get the fair market value for the spectrum. Which is what ought to be done.

I want to underscore that this Congress is not limited to choosing between the FCC formula and 801. I mean it does not take a very imaginative mind to come up with what I suggest. Indeed, this Congress does that frequently in enacting retroactive legislation. And the U.S. Supreme Court has repeatedly blessed its constitutionality—most recently last June.

There, Congress retroactively eliminated an estate tax deduction for certain estates that sold stock to an employee stock ownership plan. This particular estate went out in the marketplace. It lost \$636,000 in order to acquire the stock to sell it to the ESOP. It claimed its deduction. Retroactively, Congress said, you know, you cannot claim the deduction. And moreover, you are stuck with the \$636,000 loss. And the U.S. Supreme Court unanimously said that is acceptable.

It seems to me that the proponents of section 801 are akin to a policeman who demands gratitude for bargaining with a thief to plunder but 50 percent of a bank vault. The duty of Congress is to protect all of the public interest all of the time. And it can do so very easily by simply changing 801 so you throw up the three pioneer licenses to competitive bid. Give them restitution.

This can be done if the GATT legislation is deferred into next year, which is consistent with our international obligations. Next year the no-amendment rule lapses. Next year the 20-hour ceiling on debate lapses. And it can be done correctly.

It has been suggested by many—or hinted at—that if we do not vote this year on GATT, up or down, including 801, we will be in the era of Smoot-Hawley tariffs and worldwide depression. Well, I suggest that is nonsense. Utter and complete nonsense.

World trade now is thriving, even though we have not yet ratified the WTO agreement. What is the rush? What is the rush?

We are satisfactorily pursuing our international trade under the current GATT rules, which does not have anything like 801 in it; nothing like the World Trade Organization—and some problems there.

We are much better off by deferring until the next Congress the consideration of the GATT package so that we are not confronted with this up or down choice.

I would just like a last word. It does seem to me, Mr. Senator—especially, Mr. Chairman—that it smacks of effrontery that one of the pioneers denounces so-called congressional pork daily in its editorial pages, while it is very welcome to participate in what I would style one of the steals of the century.

And it reminds me of an old joke about a Lebanese child. It may be apocryphal or not. He was confronted one day at school by his teacher to add 2 plus 2. Tell the teacher what the sum was.

Now, this was a very precocious child. He thought for a while, and then retorted: Am I buying or am I selling? [Laughter.]

And that is what it seems to me the Washington Post here is asking about 801 and pork.

Thank you, Mr. Senator.

[The prepared statement of Mr. Fein follows:]

PREPARED STATEMENT OF BRUCE FEIN

I am grateful for the opportunity to testify in opposition to Section 801 of the Uruguay Round GATT implementing legislation because of its unprecedented endorsement of public profiteering. Three companies—Omnipoint, Cox Enterprises, Inc., and American Personal Communications (70 percent owned by The Washington Post Co., hereinafter, "The Washington") would receive 30 MHz broadband personal communications service (PCS) licenses at prices scandalously below fair market value. Omnipoint audaciously insists that "Americans benefit" from such plunder of the U.S. Treasury and concomitant warping of competition in PCS markets. But to paraphrase a former Defense Department nominee from General Motors, Inc., what is good for Omnipoint, Cox, and The Washington Post is not necessarily good for the United States.

I. INTRODUCTION

Section 801 is twice flawed: it would block the ordinary right to seek reconsideration by the Federal Communications Commission or judicial review of its tentative awards of "pioneer preference" (PCS) licenses to the triumvirate, an unprecedented statutory interference with time honored procedures that insure correct and fair decisions; and, it would enrich the three by establishing a scandalous formula to set fees for the licenses that would distort competition and lose approximately \$1-2 billion for the American taxpayer.

PCS is a technological advance in cellular service. It offers subscribers facsimile and data transmission in addition to voice communication; and, similar to cellular service, only two unrestricted 30 MHz licenses per market are allocated. The fair market value of the three pioneer preference licenses tentatively issued by the Federal Communications Commission for the lucrative New York, Los Angeles, and Washington, D.C. markets probably approximates \$3 billion, deduced from educated judgments of investment bankers, telecommunications experts, and the value of some competing cellular service licenses.

The Section 801 formula, however, is expected to yield but \$875 million in government revenue, a colossal loss of over \$2 billion from fair market value that can constitutionally be avoided through retroactive legislation revoking the tentative licenses, awarding them through competitive auctions like all other 99 broadband PCS licenses beginning December 5, and providing restitution to the three would-be robber barons.

Retroactivity is no legal novelty. Taxpayers are frequently saddled with retroactive tax increases, and businesses are frequently saddled with retroactive and expensive rent controls and environmental, health and safety regulations. The United States Supreme Court has sustained their constitutionality.

The Uruguay Round GATT legislation should be deferred until 1995 when the lapse of fast track rules in Congress will permit curative amendments to remove the taint of Section 801. Current fast track rules make the GATT implementing legislation nonamendable. Deferral would also enable a reasonably exact measure of the massive dollar losses incurred under the Section 801 formula because competitive auctions conducted by the FCC for 99 PCS licenses throughout the nation will be completed next January. To vote before those auctions are concluded would be fiscally irresponsible.

II. BACKGROUND

The pioneer preference rules of the FCC provide opportunities for applicants to obtain licenses for spectrum use without challenge from competing applicants by demonstrating the development of a new communications service or technology.¹

In October 1992, the FCC tentatively granted pioneer preferences to Omnipoint, Cox Enterprises, and The Washington Post for the provision of broadband PCS in the New York (including Northern New Jersey), Los Angeles (including San Diego) and Washington, DC (including Baltimore) markets, respectively.² New York and Los Angeles are the top two PCS markets, and Washington, DC is tenth.

In December 1993, the FCC reaffirmed the tentative pioneer preference grants (subject to petitions for reconsideration and judicial review) without requiring any spectrum fee payments, i.e., with no PCS license charge.³

After the 1992 provisional license grants, Congress expressly empowered the FCC to award PCS licenses by auction,⁴ which prompted it to reconsider the three cost-free pioneer preference PCS licenses.⁵ Competitive bidding, the FCC reasoned, would stimulate technological innovation—the goal of pioneer preferences—because the greater the value of the innovation the higher the affordable bid by the innovator against rivals.

On August 9, 1994, the FCC concluded that Omnipoint, Cox Enterprises, and The Washington Post should pay spectrum fees for their pioneer preference licenses to further fair competition.⁶ The FCC has allocated two unrestricted 30 MHz PCS licenses per market, similar to the cellular service's two licenses per market rule, and all but the pioneer preferences are slated for competitive bidding to commence December 5. If the pioneers paid nothing for their licenses, they would enjoy a rich and unfair advantage over their competitors in the New York, Los Angeles, and Washington, DC markets.

The FCC's understanding of how the competition bidding process in general would work in the award of broadband PCS licenses prompted it to voice:⁷

* * * concern over the award of free licenses to some parties when other licensees competing in the same markets must bid and pay substantial amounts of money for their licenses. In particular, we are concerned that the award of free licenses to APC, Cox and Omnipoint would result in unjust enrichment of the parties and give them a financial advantage over licensees who may pay significant sums for their licenses. We are also concerned about the effect that granting free licenses to these applicants might have on the auction process.

The FCC explained that requiring the trio of pioneer preference winners to pay for their PCS licenses would not be inequitable in six separate paragraphs:

- Paragraph 10 of the Memorandum and Order [footnotes omitted];

In adopting the pioneer's preference procedures, the Commission sought to foster the development of new services and to improve existing services by reducing the delays and risks for innovators associated with the Commission's allocation and licensing processes as they existed then. In particular, the Commission was concerned that an innovator facing a lottery had no assurance of receiving a license and therefore no confidence in its ability to obtain a license as a reward for its efforts. We decided to offer a significant reward to encourage innovators to present proposals for new technologies and services to the Commission in a timely manner. In crafting this "reward," our intention was to assure innovators that they would be able to obtain licenses so as to implement their innovations. We did not contemplate rewarding an innovator by giving it a license for free while its competitors had to pay, because at that time no one paid for initial licenses. Rather, we decided to permit an otherwise qualified pio-

¹ See 47 C.F.R. § 1.402, 1.403, 5.207 (1993).

² Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Tentative Decision and Memorandum Opinion and Order, 7 FCC Rcd 7794, 7777-7804 (1992).

³ Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Third Report and Order, 9 FCC Rcd 1337, Paras. 10-36 (Washington); Paras. 37-50 (Cox); and Paras. 51-74 (Omnipoint) (1994) ("Broadband Report and Order"), recon. pending; petitions for review filed, *Pacific Bell v. FCC*, DC Circuit Nos. 94-1148, et al., remanded on the Commission's motion, July 26, 1994.

⁴ See 42 U.S. Code, 309(j).

⁵ Review of the Pioneer's Preference Rules, ET Docket No. 93-266, Notice of Proposed Rulemaking, 8 FCC Rcd 7692, 7693, Para. 7, (1993) ("Pioneer's Preference Review").

⁶ See The Matter of Review of Pioneer's Rules, ET Docket No. 93-266, and In The Matter of Amendment of the Commission's Rules Establish New Personal Communications Services, GEN Docket No. 90-314, PP-6, PP-52, and PP-58, Memorandum and Opinion and Order on Remand, August 9, 1994.

⁷ Id., Para. 9.

neer's preference recipient to apply for a license without facing competing applications.

Our objective in establishing a pioneer's preference is to reduce the risk and uncertainty innovating parties face in our existing rule making and licensing procedures, and therefore to encourage the development of new services and new technologies. The essence of this risk and uncertainty is that they may not be awarded a license and, therefore, may not be able to take their developmental work into full business operation. The most workable action we can take to reduce this risk is effectively to guarantee an otherwise qualified innovating party that it will be able to operate in the new service by precluding competing applications.

- Paragraph 11 of the Memorandum and Order [footnotes omitted];

The Commission concluded that it had the authority to grant a dispositive preference as a reward for innovation. The text of the Commission's decisions make clear that the overriding objective of the pioneer's preference rules was to ensure the award of a license to an otherwise-qualified pioneer's preference recipient. Nowhere did the Commission suggest that it wished to give the preference recipient a financial or competitive advantage over other licensees. Indeed, in rejecting proposals to give preference recipients a formal headstart over other licensees, the Commission explicitly rejected that goal. We have recognized from the outset that pioneer's preference recipients may receive a de facto headstart because of the nature of our licensing process, but we specifically declined to provide a headstart beyond any such de facto headstart. In light of this background, the arguments of the petitioners to the court, and our further understanding of the auction process, we now conclude that our pioneer's preference rules should be amended to require preference recipients in those proceedings where tentative decision had been reached at the time of the auction statute's enactment to pay for licenses.

- Paragraph 13 of the Memorandum and Order [footnotes omitted];

At the time the pioneer's preference rules were adopted, all licenses were awarded at the same price—for free. We see no sound public interest reason to award some licenses for free when other licensees who will compete in the same markets will have to pay for them. Pioneers were never promised a free license, or even a discount or a bonus, but instead were assured that they would be able to obtain a license if they developed valuable technological innovations. Moreover, we fail to advance Congress's objective, set out in Section 309(j)(3)(C) of the Act, of "avoidance of unjust enrichment" if we award pioneer's preference licenses to these applicants for free. We recognize that congress has instructed us not to seek to maximize auction revenues at the cost of other important objectives. Nonetheless, we do not interpret that admonition to require us to award pioneer's preference licenses for free if that would serve no valid public interest purpose and in fact would disserve other important objectives. Accordingly, we conclude that the proper application of the pioneer's preference policy in the auction environment where tentative decisions were made prior to the auction statute is to guarantee that the pioneers receive licenses, but on roughly the same terms as other licensees. That is no less than the pioneers were promised when the pioneer's preference policy was adopted.

- Paragraph 14 of the Memorandum and Order [footnotes omitted];

Our decision here is buttressed by our concerns about introducing financial inequalities into the broadband PCS market. We recognize, as APC's economic experts argue, that profit-maximizing firms in a competitive market will not base their pricing and output decision on "sunk costs," but on marginal or incremental costs. We nevertheless believe it self-evident that awarding licenses for free to some parties while requiring others to pay substantial sums is likely to provide the pioneers with a financial advantage over their competitors. We do not seek to equalize the financial status of competitors or to handicap those that obtain advantages by virtue of their other activities or holdings. Here we see no legitimate basis for creating financial advantages for some parties over their competitors. We would not charge pioneer's preference winners for their licenses simply to enhance the government's revenues or to ensure that pioneer's preference recipients do not have lower debt payments than their competitors, if there were a good public interest reason to award licenses to pioneers without requiring payment. But based on the record here, and in light of our experience with auctions, we conclude that our public interest mandate requires that pioneers not obtain licenses free of charge while their competitors must purchase licenses at auction. Providing licenses to preference winners for free would give a financial advantage to some competitors with no public inter-

est benefit. We believe such action would disserve important public policy objectives.

- Paragraph 17 of the Memorandum and Order [footnotes omitted];

We recognize that the preference recipients have argued that the public interest would be served by granting them free licenses as a reward for investments and disclosure of information they have made in reliance on their expectation of a preference. There is, however, no evidence in the record to suggest that such investment and information disclosure would not have been made if the preference recipients had known they would have to pay for a guaranteed license. We believe it is reasonable to conclude that, to the extent this investment and disclosure related to Commission rules at all, it related to the expectation of a guaranteed license, not a guaranteed license without payment where other competitors must pay for their licenses.

- Paragraph 36 of the Memorandum and Order [footnotes omitted];

We recognize that our decision here is a reversal of the course we took initially with respect to payments made by the broadband PCS pioneers. In this regard, it is similar to our recent decision to require payment by Mtel for its narrowband PCS license after first deciding not to require payment. We asked the court for remand of the pioneer's preference review order and the broadband PCS pioneer's preference order to give further consideration to this important issue. We believe that this change is well supported by the record and best serves the public interest. When we first considered the payment question, these pioneers had only their tentative preferences and, even now, their preferences are the subject of petitions for reconsideration and petitions for review. Thus, not only do we believe that our change of course is legal and best serves the public interest, we also believe it does not undermine any legitimate reliance interests of APC, Cox and Omnipoint.

The FCC concluded that the license prices should be the lower of ninety percent (90 percent) of the winning bids for the other unrestricted 30 MHz licenses in the New York, Los Angeles, and Washington, DC markets, respectively, or ninety percent (90 percent) of the average per population price for unrestricted 30 MHz licenses in the top ten PCS major trading areas (MTAs) offered at auction multiplied by the populations of the New York, Los Angeles, and Washington, DC MTAs, respectively.

III. CONGRESSIONAL OPTIONS

Congress enjoys the option of responding to the FCC's ninety percent (90 percent) payment standard for the three pioneer preference PCS licenses by retroactively revoking the tentative awards, reimbursing the three for out-of-pocket expenses that would not have been incurred but for the prospect of free licenses, and opening the preference licenses to competitive bidding. That retroactivity would insure that taxpayers receive full value for the public spectrum exploited commercially by private parties; it would further insure competitive balance in the New York, Los Angeles, and Washington, DC markets.

Legislative retroactivity is no novelty. Tax laws frequently apply retroactively, including income tax hikes enacted by the 103rd Congress. The constitutionality of retroactive tax or economic laws was generally upheld last June by the United States Supreme Court in *U.S. v. Carlton*.⁸ The Court explained that retroactive tax or economic legislation pass constitutional muster if rationally related to a legitimate objective.⁹ Promoting competition or preventing unjust enrichment would both qualify as legitimate government goals furthered by opening tentative pioneer preference licenses to auction.

The Court has upheld a variety of retroactive burdens on business, such as rent controls, pension liabilities, worker health care, and debt moratoria against constitutional attack.¹⁰

As a less attractive alternative, Congress might leave the FCC license fee ruling undisturbed, subject to administrative reconsideration and judicial review.

⁸ 114 S. Ct. 2018 (1994).

⁹ *Id.* at 2022.

¹⁰ See e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 US 1 (1976) (health care liability); *Connelly v. PBGC*, 475 US 211 (1986) (pension liability); *General Motors v. Romein*, 112 S. Ct. 1105 (1992) (worker's compensation); *Block v. Hirsh*, 256 U.S. 135 (1921) (rent control); *Home Bldg. & Loan v. Blaisdell*, 290 U.S. (1934) (mortgage moratorium).

IV. THE SORDID STEAL OF THE CENTURY

The Clinton Administration, working in collaboration with powerful Members of Congress, however, has chosen a scandalous third option that should not survive the disinfectant power of sunshine. The Administration buried in the bill implementing the Uruguay Round of GATT a munificence for The Washington Post, Cox Enterprises, and Omnipoint that should awe even those jaded by the Gilded Age.

Educated estimates of the fair market value of the three pioneer preference PCS licenses approach \$3 billion, as indicated in the chart attached as an Appendix: \$1.5 billion for New York, \$1 billion for Los Angeles, and \$351 million for Washington, DC. That estimate is reasonable; it is derived in part from recent cellular license values, and the characteristic colossal underestimating of the value of new telecommunicationS technologies and markets. For instance, it is commonplace that cellular licenses are approximately ten-fold more valuable than initially anticipated. And the Office of Management and Budget (OMB) recently estimated that winning bids in narrowband PCS auctions would be virtually nil¹¹; instead, they exceeded \$617 million.

The New York, Los Angeles, and Washington, DC PCS markets are especially alluring because a relatively high percentage of the population covered will both subscribe and use the service intensively, a conclusion reasonably extrapolated from experience with cellular service in these areas.

Section 801 of the GATT implementing legislation would make the FCC's tentative broadband pioneer preference grants to Omnipoint, Cox Enterprises, and The Washington Post permanent with no opportunity for administrative reconsideration or judicial review. That legislative diktat of telecommunications licenses is a novelty in the annals of the FCC, and is of invaluable benefit to the recipients by eliminating delay, legal costs and the risk ultimately of losing their tentative licenses in the customary review process. Further, Section 801 would establish an outlandish formula for setting PCS license prices for the pioneer preference triumvirate: namely, the average per capita PCS license value in the top twenty markets as determined through competitive bidding, but excluding the exceptionally lucrative New York Los Angeles and Washington DC markets in the calculation, where subscriber penetration and use levels will be substantially higher than elsewhere based on years of experience with cellular service. And even these below-market values for the three lucrative MTAs are slashed an additional fifteen percent (15 percent) by Section 801. The end result, if Section 801 is enacted, is a \$1 billion discount for Omnipoint from the probable value of its New York broadband PCS license, a \$730 million discount for Cox Enterprises for its Los Angeles license, and \$218 million government subsidy for The Washington Post for its Washington, DC license.

That \$2 billion in federal largesse showered on but three companies to the detriment of American taxpayers and fair competition in PCS markets is inexcusable. There is no constitutional barrier preventing Congress from either insisting on fair market value payments from all three, or from revoking the pioneer preference license grants, opening them to auctions, and reimbursing the three would-be grantees for expenses that would not have been incurred absent the FCC's initial hint of free spectrum use.

Neither legislative alternative would be inequitable. Any genuine technological discoveries of the three broadband pioneer preference winners are protected by patent laws. Further, if the non-patentable innovations of the three are authentic, they will win licenses at competitive auctions because the spectrum will be more valuable to them than to rival bidders. Moreover, the claim of the three to trailblazing technology seems problematic: the FCC seriously considered fifty (50) pioneer preference applications, including those from such respected companies as Ameritech, US West New Vector Group, Inc., and Time Warner Telecommunications, Inc.¹² And major bidders for the 99 PCS licenses scheduled for auction beginning December 5 are plentiful, a good proxy of their belief that their PCS technology is competitive with that of the three putative innovators.

The Section 801 gold-plated gifts to Omnipoint, Cox and the Washinaton Post make the oil leases of Teapot Dome notoriety pauperish in comparison. Those leases were voided, a rectification upheld by the United States Supreme Court in *Pan*

¹¹ The recent AT&T acquisition of McCaw and Wireless Telecom Investor (WTI), an industry trade publication, provide edifying estimates of per population values of cellular companies. The AT&T/McCaw deal was consummated at an apparent average cellular license value per pop of \$274, a figure that reflects an averaging of more or less lucrative markets. WTI values LIN, which has cellular properties in NY, LA and DALLAS at \$315 per pop. In stark contrast, the Section 801 formula for setting the price of the three pioneer preference licenses is likely to yield a per pop PCS value of but \$17. See Appendix chart.

¹² See n. 3, supra, p. 4.

*American Petroleum and Transport Co. v. U.S.*¹³ Congress should similarly void the rich pioneer preference gifts of Section 801 by stripping it from the GATT implementing legislation, an option available only if a vote is deferred until 1995 when the no-amendment rule for the GATT bill will expire.

Congress should open the pioneer preference licenses to competitive bidding both to further PCS competition and to prevent unjust enrichment at public expense.

V. HOLLOW SECTION 801 DEFENSE

Defenders of Section 801, including some Members of Congress, urge that it deserves praise for requiring the three pioneers to pay something for their PCS licenses, even if less than fair market value. They insist that the FCC lacks statutory authority to levy a license charge on the pioneers, and thus the triumvirate will prevail in court challenges to that authority (and pay nothing) absent Section 801. In any event, it is argued, the difference in the FCC and Section 801 license charge formulas are not dramatically different.

Those arguments are acutely flawed. They ignore the enormous value to the pioneers of making their tentative licenses instantaneously final. More importantly, they neglect to measure Section 801 against the constitutional and most enlightened congressional legislative option: namely, opening the three pioneer preference licenses to competitive bidding both to insure fair competition in PCS markets and to forestall private profiteering through exploitation of a public asset.

In sum, Section 801 seems akin to a policeman demanding gratitude for bargaining with a thief to plunder but 50 percent of a victim's valuables. The duty of Congress is to safeguard all of the public interest all of the time.

APPENDIX

The Steal of the Century

High, midrange, and low estimates		Major trading area	Pop	Value per Pop (dollars)	License value (dollars/million)
1	NY	24.4	60	1,464	1,049
2	(Omnipoint)		50	1,200	785
3	.....		40	976	561
			117	415	
1	LA	19.1	55	1,051	726
2	(Cox)		45	860	535
3	.....		35	669	344
			117	325	
1	WAS	7.8	45	351	218
2	(The Washington Post)		35	273	140
3	.....		25	195	62
			117	133	
1	Total				1,993
2	Total				1,460
3	Total				967

¹ Estimated average value per pop for top 23 markets excluding NY, LA, WAS is \$20, according to informal forecasts of government experts. \$20x.85=17.

NY, LA are top two markets and WAS is tenth.

License values increase with population density, likely subscriber penetration, and likely subscriber use.



The CHAIRMAN. Thank you, Mr. Fein.

I wish Senator Dorgan was here, because I am confident he would agree about "What is the rush?" in that context. The GATT agreement has until July 1995, through at least the first 6 months of next year. None of the industrial countries have taken it up and debated it or affirmed it. And there is no rhyme nor reason, other than the politics of this year's rush.

Specifically, Mr. Smith, your point. You said that there is no way for a small company to get a license. Of course, that was the intent we had with the lottery. We are very intimate to this particular procedure. And that is why we were thinking that that was the only way for a small company to get a license. Because, under a lottery, a small company could be equal to the large or rich.

Now, of course, with the auction, the reason we came in this direction in the Congress is that the small companies getting the license—they were holding their own auction. So, we might as well hold the auction on behalf of the people.

So, I wanted to correct that idea that you could not get a license, and then nobody would have the incentive to provide innovation. And the expression you used was it would kill it off. No one is saying that you should not get the license.

Commissioner Barrett has already testified, and the order says, as of August 9, 1994, this year, that the license was intended, but not intended free.

Now, you talk to the promise. Mr. Schelle, maybe you can look in your records and look in Mr. Schelle's records while I ask Mr. Kelley a question—and then I am going to yield—to find the page

and line, other than the footnote, about the promise. We know about the footnote. But the footnote was made in pursuance of the understanding. The understanding and all, of course, was changed by Congress.

And in pursuance of that change with Congress, they issued their order of August 9. And just as a lawyer going up before the court—where they were promised, rather than given an understanding—the actual promise made. Now, we know the representation was for a license, but the promise on getting it free.

Mr. KELLEY, right at the last you were saying that you had sold—QUALCOMM had sold that technology to one of the—well, to Mr. Schelle—is that correct?

Mr. KELLEY. That is a fact. Yes, sir, Senator.

The CHAIRMAN. So, what is innovative? I mean if you have got it and are selling it already.

Mr. KELLEY. What is innovative is our development of the technology. And he was the first one to recognize the innovation, and he bought the first one we ever built. And I think that what is innovative about it and the important point that I would like to leave is that there is a worldwide battle going on between our technology and the European technology. The only U.S.-generated wireless technology that is being considered anywhere in the world is QUALCOMM's. We are fighting—

The CHAIRMAN. QUALCOMM's. I want to hear it clearly. Because how is it the Commission granted it to Mr. Schelle and not to Mr. Kelley?

Mr. KELLEY. Well, you know, Senator, that is what is in our petition for reconsideration. The Commission's theory was that what we had developed was developed a standard for cellular, and therefore it was not for PCS. I think they were wrong.

But the fact is that everybody recognizes that it is innovative technology. And we are in a worldwide battle with GSM. We are in this battle in China. A letter was just sent to the Commerce Department last week because we are in a battle against GSM in Brazil.

It is QUALCOMM's CDMA which is being used by Motorola and by AT&T, fighting against the European technology, GSM. That is what this fight is all about in the long term. The record clearly shows that when a country adopts a foreign standard, our manufacturers do not get very much of its market. When they use an American standard, which our CDMA is, U.S. manufacturers get a much larger share of that market.

The CHAIRMAN. And did I hear correctly you saying they are about to sell it to the Europeans?

Mr. KELLEY. Pardon me?

The CHAIRMAN. The European technology, you said that this license, were it granted, and already finalized beyond this hearing, that that license and everything else is being sold?

Mr. KELLEY. No. What I said, Senator, was that Electronics Buyers News reported last Friday that American Personal Communications and Omnipoint have selected the European technology, GSM for their PCS system. That is a quote.

Mr. SMITH. Can I respond to that?

The CHAIRMAN. Please do.

Mr. SCHELLE. I would like to respond, too.

Mr. SMITH. There are a lot of things we could talk about. But this is the kind of accusations that you get when all you know are what gets reported in newsletters or talk shows or whatever.

We had a press conference with Northern Telecom at the Personal Communications Industry Association on I guess September 22, where Northern Telecom, who licensed our technology and is going to integrate our U.S.-built RF access technology into their switches, Northern Telecom's head of their entire wireless division and myself gave a press conference in front of about 100 people—which was covered by the press.

I have no control over how various newsletters choose to report it. But here are the copies of the actual press releases from Northern Telecom. And what we announced was that we would have our RF technology, with Northern Telecom, integrated into AIN Class V switches, which are used in every central office in the United States and built in the United States; GSM switches, which are built in the United States by Northern Telecom, in Richardson, TX—the software is written in Santa Clara, CA—our U.S.-built RF access technology will be integrated to that, as well as integrated to PBX's and Centrex.

Now, why did we do a GSM?

GSM stands for global system for mobile communications. GSM is a switching infrastructure. It is used today in the United States by Bell South to run their AMPS. It is used to run IS54 TDMA, which is a digital cellular technology competitive to QUALCOMM. It is used to run NexTel's ESMR system.

This is the switching fabric. Our announcement is about integrating our U.S.-built RF access technology with a U.S.-built set of different types of switching.

And why would we even do it?

It is so that we can sell it to other people.

GSM gives us the right to sell our technology to the rest of the world. We are in the same competitive situation as QUALCOMM to sell to the rest of the world. We intend to export our technology by marrying it to what other countries have already chosen. That is the reason why we did it.

And as far as—I would be happy to go into more detail, but that is the reason we did it.

Mr. SCHELLE. Senator.

The CHAIRMAN. I will let Mr. Schelle respond.

Mr. SCHELLE. I have three short comments. First of all, I have always admired QUALCOMM. Obviously we have had some business relationship. And I know that Pac Bell and QUALCOMM have—I think QUALCOMM has been partially owned by Pac Bell, so I know they have some kind of a relationship.

But if QUALCOMM feels that they have been wronged by the FCC—and some of us feel that way in different ways—they have the court remedy, which we are pursuing right now, also.

The second thing is about our technology. First of all, the FCC requires the pioneers to use your own technology. So, we will be using our own technology—number one. Number two, when I named the company American Personal Communication, I insisted of myself that we buy American equipment. So, I can assure you

that we will be buying equipment that is made in the United States.

I hate to say this, but I do know that QUALCOMM's handsets are Sonys. [Laughter.]

And I do not want to set up a whole new set of arguments here, but I could not resist it. [Laughter.]

The CHAIRMAN. Mr. Kelley.

Mr. KELLEY. First of all it also happens to be false.

The CHAIRMAN. What is that?

Mr. KELLEY. What he just said is false. QUALCOMM's handsets that we are delivering now are built by QUALCOMM not by Sony. The chips are made by NCR based on our design.

We have set up a new company, a joint venture, in Rancho Bernardo, CA—51 percent owned by QUALCOMM, 49 percent owned by Sony—to make and market phones in the United States and around the world.

Relative to what Mr. Smith said, he can talk from now until Hell freezes over, but the fact of the matter is that GSM is not just a switching technology—it is not part of IS54, it is a unique European technology which the EC is pushing around the world and which he signed \$100 million contract with Northern Telecom to install in the New York market. And it is European technology. And it is not American technology. It is that simple.

Mr. FEIN. It does seem a little duplicitous for APC to say Qualcom has its remedies in the court, and on the other hand they grab onto 801 so that they do not provide anybody else to challenge their right to a license through judicial remedy.

The CHAIRMAN. Mr. Daniels, and then I will yield. Mr. Daniels, a so-called Cox usage of the cable transmission as being innovative—I have understood we were the military and TCI has carried over the cable military conversations and has been using this technology for several years. Is that correct?

Mr. DANIELS. That is exactly right, Mr. Chairman. There are a number of inconsistencies in the comparisons made with Cox's pioneer preference technology innovation compared to other companies. Rogers in Canada also demonstrated that same ability to carry telephony over cable, and the overall integration capability has been demonstrated by a number of organizations.

The CHAIRMAN. Thank you. Senator Pressler.

Senator PRESSLER. I want to be fairly brief here, but I look upon this as a great opportunity to learn how we get new innovations in our society. So, if each witness could keep his answers fairly brief here, I'm going to go through my questions fairly quickly.

First of all, Mr. Daniels, you are with Pacific Bell. In arriving at the value of the spectrum, you relied on a comparison between the cellular and the PCS industries. In the cellular industry today there are only two competitors. The PCS industry, meanwhile, will not only have competition between the six spectrum winners in each market, but also between PCS licensees and the existing cellular providers.

Does your evaluation and analysis take this significant difference into account?

Mr. DANIELS. Yes, Senator. When we do our valuation for the PCS licenses we have to project all competitors in the market going

into the future including cellular, including ESMR, Nextel, and including new PCS entrants.

Senator PRESSLER. OK. Now briefly, Mr. Smith and Mr. Schelle, can you describe the amount of money and time you have spent in developing your technology which resulted in the award of your pioneer preference? And would you have developed the technology without operation of the pioneer program? As a policymaker, could I assume you might have done this anyway?

Mr. SMITH. Not in our case. Cumulatively we have spent over \$30 million. Each step of the way, and this was by the way specified at the time the program was set up, it was designed to encourage investors. In fact, in answer to Chairman Hollings' question later I will quote you some of the things the FCC said we specifically there to reduce uncertainty to the financial community.

Now, we would not have been able to do this—

Senator PRESSLER. That is another question, sir. I am trying to get moving here. Just tell me the amount of time and money you spent in developing the technology, and if you do not know exactly submit it for the record.

Mr. SMITH. Well, we have never been asked to go back in any detail, but as I said it is approximately \$30 million of which—we raised our first institutional money just a couple of months after the pioneer preference program came out. So, we would not have been able to have gone to the investment community to attract this kind of money to build something which had not even been allocated yet.

Senator PRESSLER. So, you would not have done it without it. All right, great.

Mr. SCHELLE. Senator Pressler, may I make one—

Senator PRESSLER. I am trying to get through my line of questions.

Mr. SCHELLE. We spent over \$30 million in technology work and experiments, not including any legal expenses or the like.

Senator PRESSLER. So, you each spent \$30 million you would not have spent otherwise.

Mr. SCHELLE. Well, my original deal with the Washington Post was for \$6 million, and that was prepioneer preference. So, you can see we have gone from a \$6 million agreement up to over \$30 million, and that difference is the promise of the pioneer preference.

Senator PRESSLER. OK, great. So, we could assume that this would not have happened without it.

Now for anybody, very briefly in a sentence or two, is the attack on pioneer preference merely a veiled attempt by incumbent telecommunications entities to stifle or slow the development of new competition?

Mr. SCHELLE. Yes.

Mr. KELLEY. It certainly is not by QUALCOMM. And I would just like to say one thing in response to your last question. We have spent over \$100 million developing our technology and have been awarded 20 patents by the U.S. Patent Office, and we would have done this regardless of the other pioneers' preference, and we will succeed in this business as a manufacturer with or without a pioneer's preference.

Mr. SCHELLE. If I may, I would like to say that when the concept came about, the entrenched monopolists said there was not a need for PCS, that cellular could do everything. Then as it moved ahead in spite of this, and I want to applaud the FCC for moving it ahead, the next move by the monopolists was to provide tiny chunks of spectrum in tiny market sizes so that PCS could never be able to compete with the 10-year-old cellular industry that had clustered into regional marketplaces.

Senator PRESSLER. OK. Mr. Fein, briefly.

Mr. FEIN. With regard to whether the investment would have been made I just refer you, Senator Pressler, to paragraph 17 of the Commission's memorandum opinion and order on August 1994 where they state "there is however no evidence in the record to suggest that such investment in information"—it is referring to the investment of the three pioneers—"such investment and information disclosure would not have been made if the preference recipients had known they would have to pay for a guaranteed license."

We believe it is reasonable to conclude that to the extent this investment disclosure is related to Commission rules at all, it is related to the expectations of a license, not a license without payment where other competitors must pay for their licenses.

Now, with regard to whether you need the pioneer program in order to encourage innovation, if you look at the giants in the industry who are lining up to bid in these 99 other markets where licenses have been allocated, and that is to commence December 5, they are the true giants of the industry. They all seem to believe that their innovation will be equal if not better than the innovation of the three pioneers because they are willing to buy licenses and compete with them.

Senator PRESSLER. Now, when did Qualcomm apply for the pioneer preference, and what was your experience? Now, are your rights to have the FCC reconsider that decision cut off by the GATT legislation? And does Pacific Telesis own any Qualcomm stock, or have they ever owned any Qualcomm stock?

Mr. KELLEY. We filed on May 4, 1992, when most of these applications were filed. It is shown on Doug Smith's chart. I do not know if Pactel or Telesis or Air Touch—who owns the Qualcomm stock.

Certainly at one time, because they wanted to help us innovate, Pacific Bell, NYNEX, and Ameritech did make a very small investment, totaling less than 5 percent of the outstanding stock of the company, in QUALCOMM. I do not know if those companies still own that stock. I do know that if they sold it they made a lot of money.

Senator PRESSLER. Is there any way to know the true value of these licenses prior to the broadband PCS auction being completed?

Mr. FEIN. No. I think everybody is speculating, Mr. Senator, and that is a good reason why you should defer this whole 801 consideration until next year, because next January we will know what the values are. Then there is no debate as to what might or might not be, and whether or not the OMB estimate is better than Pactel's or anybody else's. We will know. And there is no need to rush to vote this year when we have until July of next year to satisfy our international obligations.

Mr. SCHELLE. Senator Pressler, there have been some good efforts made to try to evaluate the valuations of the licenses by a number of groups, and from our standpoint Alice Rivlin's analysis was a good one where she predicted roughly \$1.5 billion valuation.

We have our economist here, Professor Gould who is a former dean of the University of Chicago School of Business. We have bought some economic analysis which indicates that somewhere around \$1.2 billion, \$1.3 billion is the valuation of those markets.

The short of it is, somewhere between \$1 and \$1.5 billion looks like the valuation of what we would be paying, of what the three of us would be paying together. But I think that is the best we can do.

Mr. DANIELS. Yes, I would like to respond to that, please. First of all in regards to the prior question about ownership, a subsidiary of Pacific Telesis, Pactel Corp., owned some stock rights in prior years. I am not sure if that continued as that company became Air Touch.

Pacific Bell has never and does not currently own any interest in Qualcomm, to answer that question.

I think this issue really surrounds an issue of fairness when we get right down to it. There are 96 total pioneer preference applicants that filed for pioneer preferences. Every one of those companies spent tens of millions of dollars and tremendous amounts of effort, and revealed their work to the public to gain a pioneer preference.

So, this issue really is not so much whether the pioneer preference winners themselves were treated unfairly. It is how the competitive dynamics—other pioneer preference applicants and new market entrants will be impacted by companies coming in with large discounts on their prices entering the markets.

Another consideration is there is going to be a whole level of designated entities entering the market. They are going to have to compete against these companies also with these very large discounts in their investment.

Senator PRESSLER. My last question. Mr. Fein, you seem to be wrapped in the robes of the independent thinker and authority here. Do you represent any clients concerning the GATT legislation? And why do you continually refer to these pioneer awards as tentative when the FCC finalized the pioneer awards in January 1994.

Mr. FEIN. In answer to the first question, I do represent—I am working against the GATT legislation on behalf of Milliken and Co., but they have no interest in PCS or any other telecommunications licenses and I have not been involved in any respect on that score.

Second, the reason why it is proper to refer to these as tentative is because those awards were subject to reconsideration and to judicial review. And, indeed, when the FCC wrote its order in August 1994 explaining why it was going to charge for these three pioneer licenses, it stated in addition that all other pioneers whose awards were on August 9, 1993—that is the day that you authorized the competitive auctions—were, quote, tentative, and I am using the word "tentative" from its own regulations, would also have to pay a fee.

The only awards that get cut off from further reconsideration and judicial review in 801, however, are the three PCS broadband 30 MHz licenses, none of the others. But that is why they were "tentative."

Mr. SCHELLE. Senator, if I may make one quick comment here. Senator PRESSLER. Three sentences, please.

Mr. SCHELLE. Our preferences were finalized in December 1993, and the documents came out in late January 1994. They were finalized. They were not tentative. They initially were tentative. They were finalized.

Another thing that you may be interested in is that just last week the Court of Appeals rendered an opinion on *Adams Telecom v. FCC*, and—four sentences.

This is about pioneers. The rules were designed to ensure that such developers would have the chance to reap the commercial benefits of their innovations. Under the new rules, a license applicant for a new service which has received a pioneer preference is not subjected to competing applications and is guaranteed a license.

And they further say that they would be guaranteeing a license and not an option to buy a license.

Senator PRESSLER. Mr. Chairman, I hope you will leave the record open for the rest of today, if we could submit some more specific questions. And I am fascinated with this process because I think in spite of all the things we do around here we get the new technologies out to the people where they can really use them somehow. That is the important thing. And I find this a fascinating hearing from that point of view, aside from GATT.

But could we—I have some more questions I want to submit.

The CHAIRMAN. The record would stay open.

Senator Packwood.

Senator PACKWOOD. Mr. Fein, do you support the concept of fast-track authority?

Mr. FEIN. No. I do think it is an exceptionally imprudent way in which to decide issues of great moment for the country not to permit Congress to have any amendments; to rush through something that is 2,000 pages long with 20 hours or less of debate. I do not think that leads for deliberative judgment, Mr. Senator.

And I think if you asked all the other Senators have they gone through and perused with some detail and care all those 2,000 pages, most of them if they were candid would have to acknowledge they had not.

Senator PACKWOOD. And would it be a fair statement to say without fast-track authority, GATT would probably have a tougher time passing than with it.

Mr. FEIN. It depends upon what the provisions of GATT are. To the extent that GATT represents a consensus and a fair and judicious judgment as to international trade and fairness, then it should go through easily like so many other trade pacts did prior to the inauguration of fast-track authority, which is of recent vintage.

Senator PACKWOOD. Go through easily—well, it is not of recent vintage. We passed it in the midseventies.

Mr. FEIN. Compared to our prior history in the United States where we considered countless trade pacts, that is rather recent.

Senator PACKWOOD. Yes. Usually either bilateral, on occasion tri-lateral, or as to a specific topic it is only recently, other than the Kennedy Round, it is only recently that we have gotten into these immense multilateral negotiations.

Mr. FEIN. Yes, and the Kennedy Round is a good example, Mr. Senator, because that precisely went through without any fast-track authority and it was multilateral.

Senator PACKWOOD. Yes, but nothing in comparison to what we are doing now. It is not even a close call in comparison.

Mr. FEIN. Which is exactly why more deliberation is needed, Mr. Senator, not less.

Senator PACKWOOD. Yes, but you know what will happen. You make a deal with either a parliamentary democracy or you make a deal with a dictatorship. In either event, they can deliver on their deal. But they are not prepared to negotiate with us if they do not have some reasonable assurance we can deliver on our deal.

And so you make a deal. And we say to the Germans, "OK, you can sell more textiles in this country." And we say, "Yes, but the tradeoff is we want to sell more pharmaceuticals in your country." And the two leaders say, "OK, done."

We then have an amendment here from the textile industry undoing that provision, and at that stage Germany says "Why the dickens should we ratify it?" That is the danger, because it is a lot easier to build a constituency to take something out of a GATT negotiation when you have no equivalent lobbying force to keep it in.

Mr. FEIN. That is true, Mr. Senator, but we do value other things in this country other than just the ability to ratify trade agreement swiftly, and one of those values is separation of powers and deliberation.

Those congressional amendments, they can get through only if they get a majority of those in both the House and the Senate to approve it. It is not as though you just have one person who casts votes for everybody else.

It is true, it is easier if the President could just negotiate international agreements and not have Congress vote on it at all. It would be easier. It would further goals of efficiency. But we do not think it would be true and loyal to our notions of separation of powers, and having the people with a little more say-so over something that could be so momentous for their own lives and employment.

Senator PACKWOOD. As Bob Dole would say, I will put you down as undecided. [Laughter.]

Now, Mr. Kelley, Mr. Schelle, and Mr. Smith, the three of you batted back and forth sort of like my dad can beat up your dad. Well, you are using, Mr. Kelley, Sony telephones of some kind. And you say, well, Mr. Smith is using GSM's and they are made—so what? What difference does it make? Are we getting down to a buy-America argument?

Mr. KELLEY. No, I certainly am not into buy America.

Senator PACKWOOD. Well, I sensed that you were with the GSM's with Mr. Smith.

Mr. KELLEY. No, no, Senator. What my point is is that I have sat around and listened to people say that this policy is pushing American technology. What I am saying is at the end of the day it is

very likely that these three pioneers will end up using for a large portion of their systems European technology, and I think that is true. And to the extent that the policy behind it was to help American technology and help exports, it failed. What it is really doing is helping European manufacturers to get a toehold with their technology in the United States.

Senator PACKWOOD. So, your quarrel is not that. Your quarrel is making a preferenced license based on the assumption that you are going to use American technology, and then having them buy foreign technology.

Mr. KELLEY. Exactly.

Senator PACKWOOD. You have no quarrel with buying foreign technology.

Mr. KELLEY. Not at all.

Senator PACKWOOD. Mr. Schelle.

Mr. SCHELLE. All of our equipment will be purchased and made in the United States.

Senator PACKWOOD. I understand that. Do you have any objection to buying superior foreign equipment?

Mr. SCHELLE. Well, I do not have an objection to buying foreign equipment on a theoretical basis, but on a practical basis I made a big stand about buying American and I am going to live with that.

Senator PACKWOOD. Well, I am curious. You make a big stand buying American. We all do on this committee. Is there something un-American about buying foreign products? [Laughter.]

Mr. SCHELLE. Well, as long as we can find American products that are fine quality and do the job that is necessary to be done, I would prefer to buy American.

Senator PACKWOOD. Now let me ask you the reverse. We have a surplus balance of trade in high-end electronic products—high end, not telephones but high end. You do not want foreign companies to adopt that same attitude. You would like them to buy our products.

Mr. SCHELLE. Yes.

Senator PACKWOOD. Is there anything un-German about buying an American product?

Mr. SCHELLE. I hope not.

Senator PACKWOOD. But there is something un-American about buying a German product.

Mr. SCHELLE. But, Senator, I want to tell you, I not only believe in buying American but I also know the way life is, that even before we have made any final decisions people would be all over Capitol Hill if we did not. And I thought it was—here it is today. We have not even gotten our license yet, and here it is today. We are being charged by my friend, Kevin Kelley, with buying—

Mr. KELLEY. I just know what I read in the paper.

Mr. SCHELLE. I knew it was going to happen like that. There are some excellent foreign systems, and I agree that we should be as a country able to buy back and forth, and I want that to happen. I just personally made such an investment in America that I am going to live with it.

Senator PACKWOOD. Mr. Smith.

Mr. SMITH. May I also respond? Again, I go back to the point of—twofold. GSM stands for global system of mobile communications. It has already been purchased and chosen in something like 40 other countries.

We are adapting our technology so we can sell it overseas to these other countries. This is equivalent to the Japanese always arguing that the American tire manufacturers never adapt their tires to the Japanese cars in Japan, and then the American people complain. Well, we are adapting our technology so we can sell it both domestically and internationally.

And again I repeat, the technology—our contract with Northern Telecom is for multiple types of switches all of which—all of which are built in the United States.

It is a very simple decision that we want to be competitive both in the United States and abroad where we are trying to sell.

Senator PACKWOOD. I have had personal experience on occasion with American industry not building to foreign standards. For years the American lumber industry would not understand why Japan would not buy 2-by-4 dimension lumber. Now, the fact that they are metric and wanted a different size did not seem to register with our people.

We have one company called Vamport Lumber outside of Portland, about 170 employees, that sells all of its product to Japan. It cuts it to metric standards, and they are doing very well. But the Japanese do not want to buy our size 2-by-4's.

Mr. KELLEY. Can I just say one thing? This is an issue I spend a tremendous amount of time on, the whole business of domestic and international standards.

What the FCC did was say we are not going to be in the standards business. You can import any kind of a foreign standard you want. I go to Europe and I cannot sell my CDMA technology in Europe because the Europeans say that you only can do it if it is an European Telecommunications Standards Institute, ETSI, standard.

And just one thing for the record about what GSM really stands for. It really stands for Groupe Spéciale Mobile, the name of the European committee that developed it. The Europeans subsequently changed the name to Global System for Mobile Communications so they could sell their technology around the world.

They can sell GSM in the United States. We cannot sell CDMA in Europe, and that is a fact.

Senator PACKWOOD. We are trying through GATT to lessen that.

Mr. KELLEY. I understand that, and I like what the Trade Representative is doing too because I think the question of open standards around the world is important.

The United States is opening its markets to foreign technology, but the Europeans are not opening their market to our technology.

Mr. SCHELLE. Excuse me, Senator. I am not a manufacturer. We do have a technology called PATHGUARD. But please understand that this GSM, however it is pronounced, is being made by Motorola, being made by Northern Telecom, and so please do not get the impression that you can only buy it out of a Ericson name or a Nokia name or a Alcatel name. It is being produced, manufactured right here in the United States by those two major companies.

Senator PACKWOOD. Well, that sounds like what Mr. Smith wants to do, and adapt his technology to it.

Mr. SMITH. The reason they changed the name—and I would like to just make two points and correct something on the record, though. The reason they changed the name is because it is no longer just in Europe. It is in 40 countries around the world. For us to sell into those countries we adapted our technology to be married to it.

I would also like to point out and correct the record. Unlike what Kevin Kelley said, they are not one of two standards. They are one of four standards that just last week were introduced.

This is our standards document, you are all welcome to read it, of which it was their vice president of engineering, Qualcomm's vice president of engineering that said, culminating a 4-year market driven effort that saw scientists and engineers who belonged to the organizations devote more than 100,000 hours toward drawing them up. Here are the following standards of which there are four going to ballot. Theirs is one, ours is one, there are two others. There are not just two standards.

Mr. KELLEY. Can I just read what the report said? What it said was the TAG-1, the group responsible for evaluating Omnipoint's standard, requested their document be balloted as a trial use standard, not as an ANSI standard. "However, there was not consensus to forward this recommendation as a JTC recommendation to the parent organization. The issue in question was whether it was appropriate to recommend a document for ballot as a trial use standard or an interim standard that contained an annex that would be restricted to organizations willing to enter into licensing agreements with Omnipoint Corp."

In other words, they would not even at this late date reveal their technology.

Mr. SMITH. Can I answer the question?

Senator PACKWOOD. Why do you guys not play golf together? [Laughter.]

Mr. SMITH. Let me answer this question. We followed a policy that is in the standards process that certain select items you need not reveal except under the standards that say you will license it to all parties on a nondiscriminatory basis, and we signed that agreement.

Qualcom has received tens of millions of dollars in license fees for its technology. We were not going to put into the public domain our technology until we start collecting some of the license fees of which Northern Telecom was the first. It would be pointless for us to just put it into the public record, all of it, but this is the part that we did put in.

So, this is a pure competitive issue. We are direct competitors on spread spectrum technology, and this has nothing to do with GATT or even the pioneers.

Mr. DANIELS. Senator, I think this discussion just points out the tremendous complexities associated with PCS, and reinforces the need to keep our due process options open.

To me, this really is a good example of why the system ought to work and not be foreclosed by the 801 legislation.

Senator PACKWOOD. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Daniels, you made the observation that I intended to make, and that is due process should ensue and be followed, and therein is our trouble because we really do not have the confidence and credibility we should have yet at the Washington level on account of the shenanigans. There is not any question.

I never got consulted on this section 801 and how to do it. Then when they come around and tell you 85 is more than 90—

Mr. DANIELS. Senator, they do not teach this in high school government classes.

The CHAIRMAN. They sure do not. Let me just make one observation and then I will yield because the hour is late.

I only noted at one program that part and parcel of the so-called contract, the preview of coming events, is going to be enterprise zones. That goes right to the distinguished Senator from Oregon's observation about fast track, and that if you did not have fast track to get with all of these countries and agree on pharmaceuticals—we will buy your textiles if you will buy more of our pharmaceuticals. Therein is the dilemma that we have with this so-called fast track, because we cannot bring out the truth.

The truth is that under the Bush administration we had a special study. It showed that under the so-called 10-year phaseout of GATT we would lose 1.1 million jobs. We tried to surface that study from Ambassador Carla Hills. We were unable to do so.

So, thereupon, the Wharton School was employed, and the Wharton School study showed we are going to lose 1.4 million jobs.

Now they are talking about enterprise zones in the inner city. We have got 96,000 of those textile jobs to be lost in downtown New York. We have got 63,000 in Watts, downtown Los Angeles.

We all run around beating our breast about how we are against crime, three strikes and you are out, build more prisons, build more prisons. And you turn around and because you have not had due consideration in the debate, you have got good, valid jobs in the inner city. You are trying to build more prisons and you are against crime. You want to come in with new ideas—innovation, innovation. And we are going to have enterprise zones when you are extinguishing the enterprise that we have got in the inner city right now with this GATT.

That is why we object to so-called fast track. It should be discussed and debated, and then each member vote on the merits. But what we are getting is a hijacking in here. It strikes me that all of this technology can be claimed because technology and communications evolves, evolves, and keeps on moving, and various ones have filed for patents and everything else, and who has really got in innovation?

They had no pioneer preference in Europe, and they have got a lot of standards, and they have got a lot of innovation there. We at Government level think we invent innovation. The truth of the matter is if the three of them all spent \$30 million, and they said with the lawyer's costs double it, say \$100 million, double it, say \$200 million, we would still get \$1 billion back for the taxpayers. And you can make a profit on what you have done and you get a license.

But what really occurs here in this committee is what the new chairman and I have just been discussing. We spent 2 years around

here trying our best to make sure we did not create monopolies in this information superhighway. And it was very difficult when you have a monopoly in the Bell system and the others are coming in, how to let Bell get into long distance and long distance get into the local carriers. And we measured it out very carefully.

Now, what you do with section 801, you definitely have given them hundreds of millions of dollars running start, not just the license. And knowing they can go forward with their technology, but a financed license to the tune of the taxpayers as has been testified to, \$1 to \$2 billion.

So, here we spent 2 years in telecommunications trying to get away from monopolies and to make sure that we had open market and competition. Competition, competition, let the market forces operate, and yet they come with 801 and say let us give these three companies a competitive advantage.

Mr. Schelle.

Mr. SCHELLE. Mr. Chairman, I appreciate your sincere interest, and Senator Pressler's also, in this. But it is interesting that you brought up monopoly because the big danger for PCS is to be bought up immediately, during the next 2 months, by the real monopolists in our telecommunications business. The Bell operating companies and a few others will probably totally dominate this industry even when it is born.

It took 10 years for cellular to be dominated by these same companies. Nine companies dominate 90 percent of the population.

I suggest that by the end of January you will have those same 9 or 10, 12 companies controlling all the licenses save maybe 3 or maybe a few more. But the three pioneers and a few others will be all that remains of the promise of a new industry with competition.

I share your concern.

Mr. FEIN. Mr. Chairman, I just think that is an incorrect assumption. The industries can thrive, even if they have some large and some small companies. IBM was a giant of the computer industry 10 or 15 years ago. There was not any special license for IBM and people said, "Gee, the computer market simply cannot function unless we inject some kind of preferences."

No preferences were ever given to the new computer makers who came in and are thriving today, and IBM has really taken it on the chin through just pure competition. And the idea that just because you have a big company or a small one that distorts the marketplace I think is just wrong. As long as entry is open and everyone can exploit their innovations according to the marketplace demands, that is what is sufficient to spur innovation as IBM shows.

Senator PRESSLER. Mr. Chairman, could I conclude on a humorous note? Some have referred to me as the prospective new chairman. I have refrained from doing that because I remember Lyndon Johnson's statement that there is nothing more humble than a Senator seeking his caucus to elect him chairman, and there is nothing more ornery the day after than a new chairman just elected. So, I am still in the first category.

The CHAIRMAN. What category have you got me in? [Laughter.]

Senator PRESSLER. You are in a great category.

The CHAIRMAN. Let the record show we will conclude the hearing. Mr. Fein, I think you were former General Counsel of the Federal Communications Commission.

Mr. FEIN. Yes, sir.

The CHAIRMAN. At what time was that?

Mr. FEIN. It was in 1983 and 1984.

The CHAIRMAN. 1983 and 1984. Well, we want to thank each of the fine gentlemen for the wonderful presentation they made. The record will stay open for further questions and any more submissions.

Thank you all. The committee will be adjourned subject to the call.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

S. 2467, GATT IMPLEMENTING LEGISLATION

TUESDAY, NOVEMBER 15, 1994

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager, senior counsel, and Troy H. Cribb, professional staff member; and Kevin M. Dempsey, minority staff counsel.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Good morning. The committee will please come to order.

Senator Dorgan is momentarily on a conference call and will be right with us. Senator Pressler will be along in a few moments. I know that Senator Exon is here. We are delighted to have him. We welcome our colleague, Senator Bingaman.

Any time you can find an individual with a 6-year term, Jim, we bow and scrape—but we welcome Senator Bingaman and congratulate him on his reelection, and let him join as a sort of full member of the committee, because we are particularly graced this morning with two of the most outstanding individuals that you could possibly have on the subject at hand.

Felix Rohatyn is known all over the United States and in the world as a most successful business leader, financier, and counselor to us here in Washington. I have followed his advice generally and with tremendous inspiration, and he has served and come at his own expense and on his own time in a most valued way. And Sir James Goldsmith has done likewise to take the opposite position.

Mr. Rohatyn makes a very strong statement on behalf of the ratification here of our Uruguay Round GATT agreement. Sir James Goldsmith, on the other hand, makes a very strong statement on why it should be rejected, so we will be able to bring to issue the contentions of both sides, and I only say that as an opening statement and yield to my colleague, Senator Exon.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. Mr. Chairman, thank you very much. I am very pleased to be with you here again this morning and have such a distinguished witness as Mr. Rohatyn. Welcome back in front of the committee.

I have a brief statement I would like to make on the matter before us. I came back especially for this meeting, Mr. Chairman, because I feel that the Senate has a very tough choice to make on this. I have made no final decision on this. I have some reservations, and that is why I want to hear some of the people for whom I have great respect to give us some advice and help on this matter, but certainly, I certainly appreciate your calling this meeting, Mr. Chairman, so that the Senate can have a better and fuller opportunity to consider all of the aspects of the GATT trade agreement.

Certainly, too, these election results gave voice to an angry American public. It is no wonder. For the last 20 years working Americans have seen their standard of living slip. In spite of the recovering economy, Americans feel, I suggest, less secure in their jobs, and the idea their children or grandchildren will have a better life than their parents did is seriously open to question.

Now we hear that free trade will solve all or most of our problems. The old chirp, chirp, chirp, that I call cheap, cheap, cheap, to bring in cheap goods from around the world with cheap foreign labor, I think certainly suggests at least that we should have some caution here with regard to how many American jobs we are placing on the line, along with the fact that I would recognize that in some instances at least we would have some new jobs, probably well-paying jobs.

As an opponent of NAFTA after an awful lot of consideration and a skeptic on GATT, I have real problems with the fundamentals of some of the examples of the so-called free trade philosophy. It is about time that Americans insisted on fair trade as well as free trade.

America is already the world's most open market of all. It is the largest market of all in the whole world. We should insist that the rest of the world catch up or risk their access to the American markets, I suggest. We seem to be doing the opposite.

As I have said on numerous occasions, Mr. Chairman, if the United States managed its defense policy the way it manages its trade policy, we would all be probably speaking Russian today.

Since the Tokyo Round, we have had 20 years of near unilateral disarmament in this area. Yes, there are a number of good features about the GATT agreement, and I am not unaware of those, and it does advance some important U.S. objectives. When I reach a final decision on this, and I emphasize that I have not reached one yet, I will be weighing the benefits of the GATT agreement against the risks of the agreement for America.

This set of hearings and my conversations with Nebraskans have been most helpful in this important decision. I certainly welcome the witnesses we have today, and I made a little legislative history together in this committee when Mr. Goldsmith, who will be one of our witnesses today, tried to take over the Goodyear Tire and Rubber Co., which I opposed very, very vehement, and it led to enactment of the Exon-Florio law that was passed out of this committee with your help.

And so certainly to the Members here I thank them, the witnesses for being here today, and thank you, Felix, for I know that I had the pleasure of serving with you on the President's Commis-

sion on the Airline Industry. Ironically, the new congressional majority actually increased the likelihood that more of the Commission's recommendations will be enacted.

Mr. Chairman, thank you very much.

The CHAIRMAN. Thanks a lot. Senator Bingaman has been a leader for the Congress with our competitiveness council and with the business council and others, working on the improvement of our competitiveness in America, and particularly as a leader in the development of our technology, and we welcome him to the committee.

Do you have an opening statement?

Senator BINGAMAN. No.

The CHAIRMAN. Thank you very much, Mr. Rohatyn.

Sir James Goldsmith is on his way, as I understand, from the airport, so we are delighted to hear from you at this time, sir.

STATEMENT OF FELIX G. ROHATYN, SENIOR PARTNER, LAZARD FRERES & CO.

Mr. ROHATYN. Mr. Chairman, thank you very much. As always, I am very happy to testify in front of your committee. You have always been very supportive, very friendly, and I very much appreciate this opportunity.

Let me say before starting that Jimmy Goldsmith is an old friend of mine, an old personal friend of mine. He is a client of my firm. We have had a great deal of fun together. We totally disagree on this particular issue, which will not keep us from having dinner together tonight or tomorrow night or any other night and having a great time.

I appreciate this opportunity, Mr. Chairman. In my judgment, the ratification of GATT is a vital issue to our economy, and as a businessman and as an investor I strongly urge its ratification. I am sure you know that I am not a technical expert on trade agreements, and there are many things that probably I will not be able to comment on with respect to some details of a very complicated agreement.

Since World War II, the United States has been at the forefront of the battle for an open world trading system. Democratic and Republican administrations have led the fight, and with the completion of the Uruguay Round, we have this goal in sight.

Congress should now ratify GATT. This is a vote on a world trading system. Trade is the backbone of the U.S. economy. Much of the present economic growth is due to the growth both in exports and in imports. Furthermore, an open trading system together with adequate capital flows will strongly support economic growth in the developing world.

Strong economic growth in the developing world is a necessity if we are to have acceptable growth in the western industrially developed nations. Exports to Latin America and Asia are the fastest growing sector of the U.S. economy. They will continue to be so, and will accelerate as the tariff barriers come down all over the world.

This is also an important issue for the future of Europe. Eastern Europe's transition from communism to democracy has been slowed down by the failure of countries such as Hungary, Poland, and

Czechoslovakia to be admitted to the European Community. Ratification of GATT will provide another push to the EC to open its doors to the East.

Critics of this agreement point to the trade deficits that the United States has run since 1980 as evidence of the failure of the Tokyo Round to produce benefits for the United States that had been predicted, and of our inability to compete with high-wage nations as well as with low-wage nations.

I was as vocal and consistent a critic of the economic policies in the United States during the 1970's and 1980's as anybody, but as this crucial vote on the Uruguay Round draws near, it is terribly important, in my judgment, that we draw the right lessons rather than the wrong ones from the experience of the past 20 years.

The deterioration of our economic strength, most commonly dated from 1973, had many roots. Serious missteps in macroeconomic policy, particularly the high inflation of the seventies and the soaring budget deficits of the eighties, were probably the most serious contributing factors.

We also neglected the foundations of our strength, failing to adequately educate our children, train our workers, and invest in infrastructure and civilian technology.

Trade policy and the lack of it was certainly part of our failure to compete. Far too long, we stayed with the habits and practices that worked for us in the fifties and sixties, when we had no serious competition and we could prosper by relying on our relatively insulated domestic market.

Other nations, notably Japan and Germany, rebuilding their industrial and technological strength, were far more focused on the need to export than we were. They provided the macroeconomic policies needed for business and workers to compete. They provided government support for the efforts of the private sector.

Japan particularly closed its market, allowing key industries and technologies a sanctuary from which to develop, and we followed the generous postwar policy of keeping our market open without demanding reciprocal market opening much longer than we should have.

But for the past decade, our companies and workers have made great progress in adjusting to the pressures of the global economy and technological change. For the first time since 1985, the United States is rated the most competitive economy in the world by the World Economic Forum.

The United States leads the world in everything from aerospace to agriculture. Industries in serious trouble just a few years ago, automobiles, steel, semiconductors, are again world class, succeeding in this market, making gains in export markets. Five years ago, Chrysler was in dire straits. Today, Chrysler sells Jeeps in Japan and minivans in Mexico.

Our Government policy has changed as well to meet the competitive challenge, and this administration, as well as its predecessor, has been far more focused on opening foreign markets through multilateral negotiations, regional arrangements, bilateral pressure, and use of section 301.

The Commerce Department has become much more vigorous in carrying out its national export strategy and focusing on big, emerging markets.

We are rebuilding our manufacturing strength around our ability to compete and to export. Manufacturing output is up for the 13th straight month. Manufacturing employment is up for the 11th straight month, adding 143,000 jobs. The economy has added 4½ million jobs since 1993.

It is in this context that the Uruguay Round must be judged and, in this context, approval of the Uruguay Round is clearly in the interests of the U.S. economy. Failure to approve it would threaten the stability of the global economy and do great damage to our own.

The Uruguay Round should be seen as both free and fair trade. It is free trade because it is the largest reduction of trade barriers around the world at one time, benefiting both U.S. consumers and producers, but it is fair trade as well, because it requires other nations which are not as open as the United States to become more open and to play by the same set of international rules.

It will have a particularly strong impact upon the developing nations of Latin America and Asia outside Japan, which are our export markets of the future. These nations have been opening and reforming their economies. The Uruguay Round locks in the gains and binds them to a new and demanding set of trade disciplines.

With the Uruguay Round, all WTO members will have to agree to play by the same rules. At precisely the time when our companies and workers are at their most competitive and when the developing world is becoming much more important to our economic growth and living standard prospects, this agreement binds most of the world into a common set of rules of fair trade and helps open the markets which will be the most valuable to us in the coming years.

In addition, how well our economy performs for its citizens relative to Europe and Japan will depend in part on how well we take advantage of the growth opportunities and trade with the developing world. Currently, the advantages are ours as the world's most competitive economy. GATT implementation would keep us on the right track.

Opponents of the agreement project a flood of cheap manufactured goods as a result of the spread of modern technology to newly industrializing nations. An acceleration of these trends, followed by the migration of service jobs, is predicted to result in lower incomes and rising unemployment in the West.

Even though imports have undoubtedly had an impact on the wages and jobs of workers in certain low-skilled manufacturing industries, these are more than offset by the increase in employment in export industries. Overall, increased trade with developing countries help increase attractive job opportunities in the United States, raise average labor productivity, real wages, and American living standards.

Furthermore, it is easy to exaggerate the so-called flood of Third World exports. True, they are increasing at a rapid rate. However, these exports absorb only 1 percent of First World income.

The huge requirements for our modern infrastructure, as well as the requirements of a growing middle class in developing countries such as Mexico, China, India, Southeast Asia, et cetera, will be a boon to U.S. export industries. These are, by and large, high-wage, high-technology industries which we need to maintain our competitive edge.

Expanding export markets will improve our economies of scale. At the same time, stronger competition from Third World countries will push us to invest more and improve our efficiency. It is again worth remembering that 10 years ago we did not think we could compete in some of our key industries, going from automobiles to computer chips. Today, as a result of new investments and competitive pressures, we are the most competitive economy in the world.

It is also worth noting that cheaper imports mean lower domestic prices, lower inflation, and higher real incomes for all American consumers. The real engine for economic change, much greater than the pressure of imports, is technological development.

In agriculture, in manufacturing, and now in services, technology is shifting jobs and altering the relative wages of different groups of workers, but that is no reason to stop technological progress. It is a reason to help those most directly afflicted.

This means that, once GATT is ratified, further action should be considered to ensure its benefits and assist those directly impacted. I can suggest two areas worthy of discussion.

The first is assistance for displaced workers. It may take more than unemployment compensation or even training and education to help workers in affected industries. Greater training, education, job placement, and moving allowances will be needed to help them find employment in other parts of the country and other industries.

In addition, an expanded public works program, much needed by cities and States all over the country, could provide additional help to those displaced by technology in general, by defense conversion, as well as by foreign competition.

The second is the question of capital availability for Third World development. In order for the developing world to realize economic growth and improvements in standards of living, both of which are important to the West, huge amounts of capital will be required. China alone has indicated a requirement of \$500 billion over 10 years for infrastructure alone.

Western capital alone is insufficient to meet those requirements, as well as to meet our domestic needs for investment and Government budgets. The development of local capital markets of size will be required if developing countries are to mobilize domestic savings as well as attract foreign capital in sufficient amounts.

These markets will have to be brought up to Western standards both as to technology as well as to legal protection for investors. American standards of disclosure, accounting rules, transparency, prohibition of insider trading and manipulation should be provided internationally. Banking regulations and capital standards should follow suit. Over time, we will have to develop global rules for investment as well as global rules for trade.

In closing, let me remind you of a development that has progressed relentlessly over the last few years and that may be the

most powerful force in the world today. Global capital markets are operating today 24-hours-a-day, 7-days-a-week—\$1 trillion of foreign exchange transactions goes through New York's clearinghouse system; \$5 trillion a year are invested all over the world.

Trillions of dollars in derivatives, letters of credit swaps, foreign exchange futures constitute an electronic chain linking financial institutions all over the world. This chain must not be tampered with. It is important to remember that the world financial markets are now more integrated today than the world trading system. These financial markets are now totally committed to open trade and investment. Any signal that carries with it a threat to international cooperation is bound to have serious consequences.

The stock market crash of October 1987 had as one of its origins a dispute between the United States and Germany on interest rates. The significant instability of all financial markets last spring had as its origin the breakdown of trade negotiations between the United States and Japan.

The financial markets are assuming ratification of GATT and continued rational and progressive economic behavior on the part of the United States. A change in U.S. attitudes, as represented by a negative vote in the Congress, would carry with it the potential for the most serious consequences in the financial markets.

The current weakness of the dollar is one of the most serious economic problems facing this country. Over \$2 trillion of the Government debt comes up for refinancing over the next 5 years, to which must be added \$1 trillion in new deficits—\$600 billion of this debt is held overseas, and further weakness of the dollar could require drastic interest rate increases to maintain appropriate foreign participation in these huge financing requirements.

A negative vote on GATT could put great pressure on the dollar. The impact on the markets and on the economy would be extremely negative. This not only could mean a lower dollar and lower stock market, but higher mortgage rates, higher auto loan rates, and lower home equity values. This is not a risk that I would care to run.

Last week's election was a dramatic moment in the political history of the United States. The world will look for early signs to indicate whether, especially in areas such as foreign economic policy, we are capable of bipartisanship and of predictability as to our commitment. The GATT vote will be the very first of these signals.

Failure to do so, and I would stress that a postponement is the practical equivalent of a rejection, would be a signal that the United States is turning inward. Other countries will do the same, and the result will be a general reduction in the level of trade.

More protection on our side will inevitably lead to the same from other countries. Ever since the end of World War II, nothing has ever happened in the trade field unless the United States has taken the lead. The opposite would be true, as well.

I urge the committee and I urge the Congress to ratify this treaty. With President Clinton at the APEC summit helping to open up Far Eastern trade, nothing would send a stronger signal about our commitment to an open trading system.

Thank you, Mr. Chairman. Thank you, members of the committee.

[The prepared statement of Mr. Rohatyn follows:]

PREPARED STATEMENT OF FELIX G. ROHATYN

I appreciate the opportunity to appear in front of your Committee. The ratification of GATT is a vital issue to our economy, and as a businessman and as an investment banker, I strongly urge its ratification. I am sure that you know, however, that I am not a technical expert on trade agreements and that I cannot comment on many details of a very complicated agreement.

Since World War II, the United States has been at the forefront of the battle for an open world trading system. Democratic and Republican Administrations have led the fight and, with the completion of the Uruguay Round, we have this goal in sight. Congress must now ratify GATT; this is a vote on the world trading system. Trade is the backbone of the U.S. economy; much of the present domestic economic growth is due to the growth both in exports and imports. Furthermore, an open trading system, together with adequate capital flows, will strongly support economic growth in the developing world.

Open markets and free trade are more than an economic imperative. Prosperous trading nations are more likely to be at peace and more likely to open up their political systems so that they all can participate. They are more likely to cooperate in addressing the global challenges we all face, and they are less likely to go to war. Promotion of prosperity is today a if not the central challenge of foreign policy. In the key hot spots—Russia, Vietnam, Haiti—we will not secure peace if we do not achieve prosperity. That is why it is critical that the Administration reach out not just to the industrial countries that are already our peers but to the world as a whole—Asia, Latin America, and Africa.

Strong economic growth in the developing world is a necessity if we are to have acceptable growth in the Western industrially developed nations. Exports to Latin America and Asia are the fastest growing sector of the U.S. economy; they will continue to be so and will accelerate as the tariff barriers come down all over the world. This is also an important issue for the future of Europe. Eastern Europe's transition from Communism to Democracy has been slowed down by the failure of countries such as Hungary, Poland and the Czech Republic to be admitted to the European Community. Ratification of GATT will provide another push to the EC to open its doors to the East.

Critics of this agreement point to the trade deficits that the U.S. has run since 1980 as evidence: of the failure of the Toyko Round to produce benefits for the U.S. that had been predicted, and of our inability to compete with high wage nations or with low wage nations.

I was as vocal and consistent a critic of the economic policies of the U.S. during the 1970's and 1980's as anyone. But as this crucial vote on the Uruguay Round draws near, it is terribly important that we draw the right lessons, rather than the wrong lessons, from the experience of the past 20 years.

The deterioration of our economic strength, most commonly dated from 1973, had many roots. Serious missteps in macroeconomic policy, particularly the high inflation of the 70's and soaring budget deficits of the 80's, were probably the most serious contributing factors. We also neglected the foundations of our strength: failing to adequately educate our children, train our workers, and invest in infrastructure and civilian technology.

Trade policy—and the lack of it—was certainly part of our failure to compete. Far too long, we stayed with the habits and practices that worked for us in the 1950's and 60's when we had no serious competition, and we could prosper by relying on our relatively insulated domestic market. Other nations, notably Japan and Germany, rebuilding their industrial and technological strength, were far more focused on the need to export than we were.

They provided the macroeconomic policies needed for business and workers to compete. They provided government support for the efforts of the private sector. Japan particularly closed its market, allowing key industries and technologies a sanctuary from which to develop. And we followed the generous post-war policy of keeping our market open, without demanding reciprocal market opening, much longer than we should have.

But for the past decade, our companies and workers have made great progress in adjusting to the pressures of the global economy and technological change. For the first time since 1985, the U.S. is rated the most competitive economy in the world, by the World Economic Forum. The United States leads the world in everything from aerospace to agriculture. Industries in serious trouble just a few years ago automobiles, steel, semiconductors—are again world class, succeeding in this

market, making gains in export markets. Five years ago, Chrysler was in dire straits; today Chrysler sells Jeeps in Japan and minivans in Mexico.

Our government policy has changed as well, to meet the competitive challenge. This Administration, as well as its predecessor, has been far more focused on opening foreign markets: through multilateral negotiations, regional arrangements, bilateral pressure, and use of Section 301. The Commerce Department has become much more vigorous in carrying out its National Export Strategy and focusing on "big emerging markets".

We are rebuilding our manufacturing strength around our ability to compete, and to export. Manufacturing output is up for the 13th straight month. Manufacturing employment is up for the 11th straight month, adding 143,000 jobs. The economy has added 4.4 million jobs since January 1993. "Export activism" is paying dividends.

It is in this context that the Uruguay Round must be judged. And in this context, approval of the Uruguay Round is clearly in the interest of the United States economy. Failure to approve it would threaten the stability of the global economy, and great damage to our own.

The Uruguay Round should be seen as both free and fair trade. It is "free trade" because it is the largest reduction of trade barriers around the world at one time, benefiting both U.S. consumers and producers. But it is fair trade as well, because it requires other nations, which are not as open as the U.S., to become more open, and to play by the same set of international rules.

It will have a particularly strong impact on the developing nations of Latin America, and Asia, outside Japan, which are our export markets of the future. Those nations have been opening and reforming their economies; the Uruguay Round locks in the gains and binds them to a new and demanding set of trade disciplines. With the Uruguay Round, all WTO members will have to agree to play by the same rules.

At precisely the time when our companies and workers are at their most competitive and when the developing world is becoming much more important to our economic growth and living standard prospects, this agreement binds most of the world into a common set of rules of fair trade and helps open the markets which will be the most valuable to us in the coming years.

In addition, how well our economy performs for its citizens relative to Europe and Japan will depend in part on how well we take advantage of the growth opportunities in trade with the Developing World. Currently, the advantages are ours as the world's most competitive economy. GATT implementation keeps us on the right track.

Opponents of the agreement project a flood of cheap manufactured goods as a result of the spread of modern technology to newly industrializing nations. An acceleration of these trends, followed by the migration of service jobs, is predicted to result in lower incomes and rising unemployment in the West. Even though imports have undoubtedly had an impact on the wages and jobs of workers in certain low-skill manufacturing industries, these are more than offset by the increase in employment in export industries. Overall, increased trade with developing countries help increase attractive job opportunities in the U.S., raise average labor productivity, real wages and American living standards. Furthermore, it is easy to exaggerate the so-called "flood" of Third World exports. True, they are increasing at a rapid rate; however, these exports absorb only 1 percent of first world income.

The huge requirements for a modern infrastructure as well as the requirements of a growing middle-class in developing countries such as Mexico, China, India, SE Asia, etc., will be a boon to U.S. export industries. These are, by and large, high-wage, high-technology industries which we need to maintain our present competitive edge. Expanding export markets will improve our economies of scale. At the same time, stronger competition from Third World countries will push us to invest more and improve our efficiency. It is worth remembering that ten years ago we did not think we could compete in some of our key industries going from automobiles to computer chips. Today, as a result of new investments and competitive pressures, we are the most competitive economy in the world. It is also worth noting that cheaper imports mean lower domestic prices, lower inflation and higher real incomes for all American consumers.

The real engine for economic change, much greater than the pressure of imports, is technological development. In agriculture, in manufacturing and now in services, technology is shifting jobs and altering the relative wages of different groups of workers. But that is no reason to stop technological progress; it is a reason to help those most directly afflicted. This means that once GATT is ratified, further actions should be considered to ensure its benefits and assist those directly impacted. I can suggest two areas worthy of discussion:

The first is assistance for displaced workers. It may take more than unemployment compensation or even training and education, to help workers in affected industries. Greater training, education, job placement and moving allowances will be needed to help them find employment in other parts of the Country and other industries. In addition, an expanded public works program, much needed by cities and states all over the Country, could provide additional help to those displaced by technology in general, by defense conversion as well as by foreign competition.

The second is the question of capital availability for Third World Development. In order for the developing world to realize economic growth and improvements in standards-of-living, both of which are important to the West, huge amounts of capital will be required. China alone has indicated a requirement of \$500 billion over ten years for infrastructure alone. Western capital, alone, is insufficient to meet those requirements and to meet our domestic needs for investment and government budgets. The development of local capital markets of size will be required if developing countries are to mobilize domestic savings as well as attract foreign capital in sufficient amounts. These markets will have to be brought up to Western standards both as to technology as well as to legal protection for investors. American standards of disclosure, accounting rules, transparency, prohibition of insider trading and manipulation, should be provided internationally. Banking regulations and capital standards should follow suit. Over time we will have to develop global rules for investment as well as global rules for trade.

In closing, let me remind you of a development that has progressed relentlessly over the past few years and that may be the most powerful force in the world today. Global capital markets are operating today, 24 hours a day, seven days a week. A trillion dollars a day of foreign exchange transactions goes through the New York CHIPS System; \$5 trillion a year are invested all over the world; trillions of dollars in derivatives, letters of credit, swaps, foreign exchange futures constitute an electronic chain linking financial institutions all over the world. This chain must not be tampered with.

It is important to remember that the world financial markets are now more integrated than the world trading system; these financial markets are now totally committed to open trade and investment. Any signal that carries with it a threat to international cooperation is bound to have serious consequences. The stock market crash of October 1987 had as one of its origins a dispute between the U.S. and Germany on interest rates. The significant instability of all financial markets last spring had, as its origin, the breakdown of trade negotiations between the U.S. and Japan. The financial markets are assuming ratification of GATT and continued rational and progressive economic behavior on the part of the U.S. A change in U.S. attitudes, as represented by a negative vote in the Congress, would carry with it the potential for the most serious consequences in the financial markets.

The current weakness of the dollar is one of the most serious economic problems facing this Country. Over \$2 trillion of the Government debt comes up for refinancing over the next five years to which must be added \$1 trillion of new deficits. Six hundred billion of this debt is held overseas and further weakness of the dollar could require drastic interest rate increases to maintain appropriate foreign participation in these huge financing requirements. A negative vote on GATT could put great pressure on the dollar. The impact on the markets and on the economy would be extremely negative. This not only could mean a lower dollar and a lower stock market, but higher mortgage rates, higher auto loan rates and lower home equity values. This is not a risk I would care to run.

Last week's election was a dramatic moment in the political history of the United States. The world will look for early signs to indicate whether, especially in areas such as foreign economic policy, we are capable of bipartisanship, and of predictability as to our commitments. The GATT vote will be the very first of these signals. Failure to do so (and I would stress that a postponement is the practical equivalent of a rejection) would be a signal that the U.S. is turning inward. Other countries will do the same and the result will be a general reduction in the level of trade. More protection on our side will inevitably lead to the same from other countries. Ever since the end of World War II, nothing has ever happened in the trade field unless the U.S. has taken the lead. The opposite would be true as well.

I urge the Committee and I urge the Congress to ratify the treaty. With President Clinton at the APEC Summit helping to open up Far Eastern trade, nothing would send a stronger signal about our commitment to an open trading system.

The CHAIRMAN. Thank you very, very much, Mr. Rohatyn.

Senator Dorgan, you had an opening statement, and we would be delighted to hear your opening statement. I want to start some questions here.

Senator DORGAN. Well, Mr. Chairman, let me do that in the context of some questions for Mr. Rohatyn.

The CHAIRMAN. Very good. Very good.

Mr. Rohatyn, from my experience, I sat at the witness table before the old International Tariff Commission, back in 1959 and 1960, and Tom Dewey of New York ran me around the table. He was representing the country of Japan.

And so having been in the game a little while and watching it and listening to the debates and waiting for the type of promises that we obtained from the President yesterday; namely that 25 or 30 years from now we are going to have free trade, to me it is very much like the promise made by the Japanese to President John Kennedy in the Fish Room. You can ask our friend Mike Feldman, who was general counsel at that time for President Kennedy, and the other witnesses there at the particular time. We have had all of those promises.

And I hear again yesterday they made these promises, and it just reminds me of, perhaps—or it likens in my mind, I should say, perhaps a meeting of football teams coming in the United States, the United Kingdom playing touch football and the rest of them all playing tackle, and they all pledge to, by the year 2020 or 2025 to all play touch football, but the pledge is not going to change the rules that are working for the others.

And here I am a U.S. Senator, looking at the needs of the country, realizing we defeated Japan not only militarily but totally economically 50 years ago, and now comes Japan, and their per capita income far exceeds ours, their productivity far exceeds ours, and they are buying up the world.

And I keep listening to the counsel that I find in this statement that we are doing well, we are the most competitive, that trade is a backbone, right here on page 1. It is breaking our backbone, as Time magazine said 2 weeks ago in their cover article, pushing us to a two-tiered society, and while you talk about being less likely to go to war, in this Senator's mind we are in a trade war.

And then you say that we could reach out: "That is why it is critical that the administration reach out to not only the industrial countries but Asia, Latin America." Of course, that is what the President feels that he is doing now, but is it not the case that if we could stop sacrificing our economy we could do a better job of reaching out by saying, there is a different way, rather than giving these ideological lectures on free trade, free trade, and being sort of an international trade nanny so that we go and lecture them, they all bow and scrape, and smile, and shake hands, and everything else, and then they go their merry way.

That is what is disturbing to me, that we reach out. We could manage trade relationships rather than lecturing. I would like your comment on that, because the results are different than what you describe here in your statement.

Mr. ROHATYN. Well, Mr. Chairman, I guess I look at it probably somewhat differently. I think at this point we are doing extremely well in exports. I think our exports are growing at a rate that is

two or three times what the underlying growth rate of our domestic economy is, and with the exception of Japan, which is a separate issue, we have really over the last decade or so improved our position tremendously, and I think frankly, when I look at the rest of the world, that it is these big developing markets that are going to be the locomotive to pull our economy over the next 10 or 15 years, if we could continue and increase the access that we have to these markets.

Now, I think we have a lot of problems with our economy, as you said earlier, and I think Senator Exon said with respect to the inability to deliver adequate improvement in the standard of living to a lot of people in this country.

Now, that is a factor. First of all, we have a pathetically low savings rate in this country. We do not save enough, and therefore we do not invest enough. We have an education system that does not provide enough skills and education to the vast majority of our people, and we have a lot of social problems, as everybody in this room and in this country knows, but those are the fundamental questions.

We are also a borrowing country. We should not be a borrowing country, and I would just—I tried to indicate to you toward the end of my statement that we need to maintain a very, very strong position in exports, and to maintain a very open world with respect to not only trade, but especially investment, if we are going to continue getting the inflows of foreign capital that we need to keep financing our operations here.

The CHAIRMAN. You mentioned exports, and you mentioned investment, and all the witnesses that ever favored GATT have chanted "Exports, exports." Every newspaper in my backyard has been publishing all the ground-out editorials from the think tanks and consultants, the multinationals, particularly the multinational banks. They do not know anything about trade, and they are handed these things, and they all talk about exports. It is much like a CPA just looking at your ledger and looking at all of your income and not your expenditures, or vice versa.

Trade figures for 1993 show the exports, you are right, are up 3.7 percent, but imports are up 12 percent. Exports to Asia grew at 8.2 percent, but imports from Asia grew at 11.7 percent. Exports to China grew, yes, 17.1 percent. The imports from China grew at 23.3 percent.

And in the most recent article here, November 14, about investments in Business Week, called "Economic Trends," I just caught the sentence in there, "According to a recent Commerce Department survey, foreign affiliates of the United States firms plan to hike their capital outlays by 8 percent this year to \$69 billion." That is where the investment is going.

The bottom line—it is a whole summary. We could read it, but you are favoring us, and we want to hear from you. "Capital expenditures by U.S. affiliates in Mexico are set to jump an eye-popping"—that is their expression—"40 percent," so you see, the opposite is true. That is this Senator's problem. We are not getting the investments.

I know, as an old southern Governor, man, we worked to carpet-bag you folks up in New York right regularly, but now it is like

grazing a cow on a concrete tennis court. There is nothing up there now in New York. We have got to go to Tokyo and Amsterdam and Germany.

And I am getting from Switzerland Hoffman-LaRoche and a French glass company, and I have got BMW from Munich, Germany, because—and there is no mystery to the politician—wages are \$30 an hour in downtown Munich, and \$15 an hour in downtown Spartanburg, SC.

So, we see it from hard experience, and we constantly hear it from the financial world, just exactly what you are saying.

We have a deficit in the balance of trade with each one of those Asian countries. Now, you say the President is out there leading, and I say this most advisedly, how can the gentleman lead when he has got a \$150 billion hole in his pocket? The deficit is probably going up to a \$160 billion hole in the pocket.

He has got a tin cup in his hand asking Japan to please finance our debt. We are not leading. Your last part of the statement on the last page is that nothing has really happened without us leading. We have got to get out of that mindset. Brother, we have dutifully and probably very wisely financed this whole global economic recovery and the transition from communism to capitalism, and it has worked. But now, with the fall of the Wall and the end of the cold war, now is the time us to get us a Marshall Plan, to get us investment in this country.

That is what the people of America cannot understand about Washington, about all the "I am for the family and everybody is against crime" and all of these meaningless things that we keep debating about that we are going to have as headlines. But we make no headway on the deficit, and certainly have no real competitive trade policy. That is the point. The investment is otherwise. You do not talk about imports—tell me about the imports.

Mr. ROHATYN. Well, Mr. Chairman, there are a couple of things that I would say to that. First of all, I think that we are getting foreign investment in this country where every day you open the paper there is another foreign company that is coming in here, either by putting up—

The CHAIRMAN. Excuse me. I agree with you. I am talking about American companies investing in America. Oh, yes. I see that in my own back yard. Yes, sir.

Mr. ROHATYN. But those things go together, Senator. I think that, frankly, it is a big advantage. If our companies do not put up plants abroad the European companies are going to do it. When we have plants abroad, that means we can supply our components to our own companies, and I think it does provide health to the economy.

I would also point out that one of our problems with respect to imports is we are importing 60 billion dollars' worth of oil. We have kind of doubled the percentage of our own use of imported oil over the last 10 years than we had before, and I would suggest that that is one area that we should look at a little bit carefully when we talk about trade balance.

Second, as you know, I have agreed with you completely over the years that we should have more domestic investment, especially public investment. I have argued very, very strenuously for a very,

very significant public works program, far in excess of what State and local governments have been able to do, because I think we need it both from a quality of life point of view and I think it is also a question of employment.

But the way to deal with our trade problems and with our deficit problems is to deal with the protection of our currency, reducing the Federal budget deficit, and increasing the savings rate in this country, which up to now everybody talks about but, until this administration came along, very, very little was done about it. And I think that has to be continued. I think the issue of our currency is a very, very important issue, and has to be looked at very, very carefully, and the integration of capital markets with trade markets is something that we cannot get away from.

If I thought there were a solution in terms of shutting down our borders to imports that was viable, I would certainly be the first to say why do we not try it. But I think that would be an absolute disaster, Senator.

The CHAIRMAN. You state also, in summing that up, that idea, that the United States is rated the most competitive economy in the world by the World Economic Forum, and I agree. We politicians—I have been in the debates and had to listen. One of the colleagues on this committee used the little train analogy and that we have got to try—"I think I can, I think I can, I thought I could—and what we ought to do is get off the golf course and, like the little train, try harder." Well, we have done that. And I agree with you, and Chrysler is selling Jeeps in Japan, and minivans, but the bottom line is we have got a \$32 billion deficit in automobile trade with just one country, with Japan.

In Mexico, we have got the figures, yes. Exports have increased 17 percent since NAFTA. But that is mostly parts to be assembled and come back into the United States. But already, imports have increased 23 percent, and the actual figure of automobiles, since you referred to it, from the first 6 months of NAFTA is that we exported 17,000 automobiles from Mexico, but we imported 154,000. Ford, Chrysler, and General Motors have all announced new facilities down in Mexico, not the United States.

So, I have got to ask myself as a Senator, when you say we have the most competitive economy, and I know from my own backyard we are producing, we are working around the clock, we have always had the most productive industrial worker in the world, way ahead of Japan, the individual worker. But the Government is not competing, you see, because we end up still that we are the most competitive economy, and yet we have got the huge budget deficit, we have got the huge trade deficit, and we are depending on Japan for the financing of our debts.

I want to agree with you on the matter of the Commerce Department becoming more vigorous. You and I have got a lot of things in your statement to agree on. I think Secretary Brown, in his trips to Latin America, China, and otherwise, is interposing his Department there, with the Saudis and others and has helped sell, has done an outstanding job. And yet we find that this particular agreement that you talk about is going to make a lot of things illegal, GATT-illegal, like section 301.

There are quite a few things which will be stuck down in the WTO: Section 301, which the Europeans and Japanese have already targeted as being GATT-illegal; section 22 of the Agricultural Act; CAFE standards; Glass-Steagall Banking Act that separates the banks from investment banks; section 7(d) of the Investment Company Act of 1940, that applies to foreign companies operating in the United States with those stiff requirements; food safety provisions; workers rights; child labor prohibitions; the State statutes; and everything else of that kind. And I am supposed to be obtaining the same rules, as you referred in your statement; supposedly we are all operating from the same rules. This is what bothers me.

Yes, tariffs go down. The average tariff is 2 percent in Japan, it is 4 percent here. But what difference does it make? Those tariff differences make little. We made a little progress on intellectual property, but the fact of the matter is that you have not opened up any markets. Japan has still got the keiretsu, Germany has its cartels, and everything else of that kind.

That is why, at the very same time we were getting GATT, we were trying to get an agreement with Japan. The Ambassador for International Trade came before this committee, and he was working long hours at night trying to get a Japanese agreement. If it were true that GATT had everybody singing from the same hymnal, that would be wonderful. But that is not the fact at all, and he knows it best because he is trying to get the Japanese agreement, and that is why the President is out there now trying to open up those markets.

Mr. ROHATYN. But, Senator, the fact of the matter is that the growth in the world is not, over the next 10 or 15 or 20 years, going to dramatically occur in the older Western industrially developed countries. It is going to occur in China, it is going to occur in India, it is going to occur in Indonesia, it is going to occur in Latin America, at growth rates twice, three, maybe four times the growth in the West. And those countries are going to need our goods, they are going to need our technology, and in many, many ways, they are going to need investment which we cannot furnish in totality because we do not have enough of it. But they can sure buy our goods, and if our companies establish themselves there we will, over time, get a bigger lock on those markets. And I just do not think that there is, frankly, any alternative.

Now, you know I cannot comment on a lot of these legal issues that you have raised, although I have read a lot of this stuff and at least to my sort of primitive reading of these things it looks as if they have been pretty well negotiated. But I am sure you will have much, much better experts than I to comment on these things. But just on the overall question of do we try to integrate ourselves in the future economic activity of these countries as opposed to allowing the Europeans to do it or even the Japanese to do it, because I am not sure the Chinese or the Indians or the Indonesians are so excited about having Japan take over big parts of their economy, there is no question in my mind that it is in our interest to do that.

And you know, clearly, reasonable people can differ on these. This is what relativity is all about.

The CHAIRMAN. And I am going to just make one comment, and then yield to the others. I have other questions, but let us go right to the heart of the export industries. With respect to the proposition that export industries are creating jobs: transportation equipment since 1985 has lost 278,000 jobs; industrial machinery and equipment has lost 284,000 jobs; the export industry of aircraft has lost 140,000 jobs; the aircraft engines and parts, a loss of 45,000; electronic equipment, 694,000 jobs loss; computers, 96,000 jobs lost; software, 25,000 jobs lost. That is just a sampling of the export industry.

Mr. ROHATYN. But, Senator, if I may, what has eliminated those jobs has been technology. I mean, technology is eliminating jobs every day at a fantastic rate. Now, that, whether it is export or import or just domestic, I watch companies that I am on the boards of, I watch companies that I work with, that improve their productivity 20, 25 percent a year. Now, what does that mean, improving productivity? That is shorthand for less people. And that is the product of technology.

Now, that is a whole different issue, and I tried to refer to that issue in my testimony, that maybe we are not doing enough, and I am quite sure we are not doing enough, to try to deal with what happens to people who are in their 40's and 50's and all of a sudden a computer assisted design machine makes their job obsolete. But that is across the board, Mr. Chairman. That is not just export-import or otherwise.

The CHAIRMAN. I was about to conclude with this: The reality check that Business Week put in recently talked of how President Clinton claims that while 1.4 million manufacturing jobs were lost during the Bush years, now we have 104,000 more than we had on the day he was inaugurated. And that is your testimony, that we have had an increase in manufacturing jobs. "The Bureau of Labor Statistics data," I am quoting, "indicate that the number of manufacturing jobs has continued to shrink from 18,094,000 in January 1993 when Clinton became President to 18,038,000 in June 1994, the latest month available, a drop of 56,000 jobs. It seems that Clinton was using a preliminary estimate for January 1993 that was too low," and would indeed indicate an uptake. "Although those numbers were revised months ago, the President continued to trumpet the old statistic * * * Still, the Clinton loss is peanuts compared to the 3.2 million manufacturing jobs lost since 1979," the year we passed the Tokyo Round.

Now, with respect to technology, and then I would yield, because this is a very interesting, more recent article from the Harvard Business Review, "Power and Policy: The New Economic Order." And just referring to it, it goes and talks about countries and low-technology/high-technology: "Countries that only 10 years ago were confined to low-technology labor-intensive economic activity are now able to produce, at low-cost, goods and services that were previously monopolies of the advanced industrialized countries. One especially notable example is Malaysia, where over the last 20 years has shed its dependence on commodities to become the world's leading producer of semiconductors, and which now discourages labor-intensive industries." You are right, it is technology, but it is not technology here. It is technology there.

"The whole phenomenon of delocalization"—these are fancy words. They called firing people downsizing. Now they call them—leaving America high and dry here, they call that delocalization. "The whole phenomenon of delocalization has broken the linkage that previously existed among high technology, high productivity, high quality, and high wages. It was this linkage that once appeared to guarantee ever-improving standards of living in the industrialized countries. Today, however, it is possible to have high technology, high productivity, high quality, and local and low wages * * *

"The delocalization option is one that no corporation can resist, in view of the intense competition all companies are facing. In fact, it has become a matter of life and death for corporations to take advantage of such opportunities in the face of what can truly be termed megacompetition, yet another crucial aspect of the global economic revolution. Corporations and countries must now compete not only against rivals in their own league, but also against the continual stream of newcomers, while at the same time playing catch-up with competitors claiming to have made the latest breakthroughs. These competitive realities are creating intense pressure to rationalize production, cut internal costs, and search for the least expensive production base."

But I love this sentence here: "Corporations and countries must now compete." The reason for this whole hearing is this country. I am not finding fault with American industry. If I ran XYZ Corporation, I would get the devil out of town, because my competition is going to do it and I have got to make the profit. This is the whole proposition, and you are right about high technology, but it is high technology over in the Pacific Rim.

Mr. ROHATYN. But if I may say, Mr. Chairman, this is also a two-way street. I mean, I was in Bangalore, India, a couple of years ago. Bangalore, India, is becoming the software capital of the world, because you have highly educated Indians who take technology that is bounced off a communications satellite and who can design software in Bangalore, which is why NEC and Intel and a lot of other companies have moved over there.

On the other hand, Texas Instruments is building a billion dollar chip plant, I think, in Texas; Intel is building a billion dollar chip plant in Arizona or North Carolina. It takes more than just bouncing communications off a satellite to develop a high-technology manufacturing base in India or anyplace else. It takes infrastructure, it takes communications, it takes a legal system, it takes a credit system, it takes all kinds of things that take a lot of time to develop and huge amounts of capital. And it is in our interest participating in that development, because if we do not, somebody else will.

I am fully allied to what you are saying here, because I have seen it, and like I say, I sit on corporate boards that have to deal with this. But I have been amazed over the last decade to see how we have turned, in many, many ways, things around from a competitive point of view domestically, how we have been able to attract foreign investment, foreign plants; how in terms of our own R&D our R&D is very competitive. I have been on the board of Pfizer for many, many years. We spend a billion-two on R&D every

year now as opposed to \$100 million 10 years ago. And we are just beating the pants off everybody, and we are creating very, very large shipments overseas as a result.

Now, I know there are huge problems, and I am very, very much aware of what happens as a result of foreign competition, but more as a result of technology and knowledge. But that is a totally irreversible trend which is, to me, much more actually dramatic in terms of the future than foreign competition. How we deal with technology and knowledge when we have a society that very, very sharply divides along knowledge lines and educational lines, and when as a country we do not have, in my judgment, adequate capital because we do not have adequate savings, those are very, very different issues and I am very concerned about them. But it does not prevent me from respectfully and with great affection disagreeing with you, Mr. Chairman, on the issue of foreign trade.

The CHAIRMAN. Very good, sir. Thank you.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Felix, I have been listening very intently, and once again I thank you for coming here because you have been an advisor of this committee for a long, long time, and I take to heart everything that you have said. I do not know that I agree with everything, but I think you have made some excellent points.

One of the points that I would like to emphasize on and then question you about is the fact that you alluded to the situation with regard to the lack of savings, the fact that foreigners on balance now own about one-fourth of our debt, is that right, in that ballpark somewhere?

Mr. ROHATYN. Yes, something like that, Senator.

Senator EXON. Does it give you pause for concern when you say that given that situation, and given the fact that you said that up until this administration no one did anything about the deficit this administration has, I would only point to the fact that there are politicians who were here before that budget vote that are not going to be here come next January. The landscape is absolutely littered with that.

Mr. ROHATYN. Senator, I did not say that reducing the deficit was a great political victory.

Senator EXON. Well, I voted for it. I thought it was the right thing to do.

Mr. ROHATYN. Well, I am glad you did, Senator. I am glad you did.

Senator EXON. But I simply say that we have got to come to grips with reality here as to what is going to happen. Do you really believe that given the shape of what is going to be the new House of Representatives and the new U.S. Senate, that if this new trade pack is ratified, you said we are going to need some public works at that time to help people who will be out of a job because of it and to help people move around the country. Do you really believe politically speaking that there is a makeup in the House of Representatives and the U.S. Senate next year to create any kind of a public works program?

Mr. ROHATYN. Well, I think, Senator, that—I think there are ways to do it. I think there are ways to do it without spending new money, frankly.

Senator EXON. Well, how is that?

Mr. ROHATYN. Well, if you want me to go into that, that is a whole different question, but I will be happy to do that very, very briefly. You know I have been very, very, very much interested in seeing that happen. But we want to cut down on the size of Government, as I understand the new political message in this country, and I think that is probably a good idea. There is a lot of money flowing to the Federal Government that you could usefully send back down to the States if at the same time you were cutting expenses here in order to balance the budget as you are doing this. And I think the States in many, many ways, if you split off a few pennies of the existing Federal gas tax, for instance, and sent it back down to the States, the States could borrow against it and run a very big increase in their investment in public works, which, as I am sure you know, Senator, every State in this country has cut back on its investment because of its problems of its budgets.

So, I think that even within the framework of the new politics, if you will, it is possible to do that. I am not saying it is easy, because all of these things involve difficult choices, and much as I was shocked, although much more as a spectator than anything else, by what happened last election day in terms of disintegration of a party that I considered my own ever since I came to this country in 1942, and many of the things I have heard make me very nervous, that does not mean that I give up hope in trying to do some of the things we have to do, because as you say, reality ultimately is going to have to be faced here.

But is it going to be easy? No. I mean, listen, I have broken my pick on things for the last 10 or 15 years that probably will never happen.

Senator EXON. I listened very carefully to your fear that if the GATT agreement is not approved the stock market would react very badly. It kind of reminds me, Mr. Chairman, and I think you will remember this, too, Felix, in either 1979 or 1980 President Carter called those of us on the Budget Committee down to the White House. Do you remember that?

The CHAIRMAN. Yes, sir.

Senator EXON. And it was a startling figure. We were about to go over \$100 billion in annual deficits. Believe it or not, we were about ready to go over \$1 trillion in total borrowing. And it was predicted then by experts, maybe not you, but if that ever happened the stock market would just go crazy.

Well, here we are 15 years later. The deficits were in the \$300 billion range. Now, thanks to the President below \$200 billion. But we are \$4.5 to \$4.6 or \$4.7 trillion in debt. So, sometimes I wonder about all these warnings that we receive about what the stock market will do. They just do not seem to come to pass.

Let me go to the heart of the matter, and my concern—

Mr. ROHATYN. If I just may comment, Senator, for a second, I do not mean to predict. I am not crying wolf here, Senator. I am not predicting that there is going to be a catastrophe. All I am saying is that we have a much more interconnected world capital system

than we did 5 years ago, 10 years ago; that the amounts that we are dealing with, not in absolute terms, in relative terms are just huge; that the off-balance-sheet commitments that have been created by things like derivatives are things that not everybody—I certainly, do not understand all of them. Most people do not understand them, but they are an inherent possible destabilizer. And the fact that we are the biggest foreign debtor in the world today and that these markets are very nervous is just something that I felt I should point out to the committee.

I am not saying that we are going to have a catastrophe. If I had to bet my own money, which I do very reluctantly, I would think that a vote against GATT would have a very negative impact on the markets. Is it going to be a runaway disaster? I would not predict any such thing.

Senator EXON. Let me get your assurances or how you have addressed this matter, which in your own mind I think you must have addressed, and that is the sovereignty of the United States of America if and when we approve GATT. Now, as I understand it, to kind of shortcut this, I want to know if you agree with this, as I understand it, under the present GATT agreement, what we have now, not what will be if we ratify this, that the United States, and let us say any—Bangladesh, for example, a small country who is one of the 113 members of the new GATT agreement, if they do not agree under the present GATT arrangements on trade, then they both walk away from it. Under the new GATT agreement, as I understand it, and tell me if I am correct, that if Bangladesh, for example, and the United States cannot agree on a trade matter through negotiations, then it is assigned to a three-member panel appointed by GATT that would meet in secret, these three panel members, take testimony in secret, and come out with a ruling as to whether Bangladesh is right or the United States of America is right. And if, in that particular case, Bangladesh would be declared the winner, there would not be much that the United States could do about that. The only way that could be overturned, because of the one-man-one-vote plus proposition with the World Trade Organization part of GATT, we would have to go back to GATT, and all the 113 members of the GATT international organization would have to override that three-member panel that meets in secret, including Bangladesh who brought the action.

Now, that seems to me to be a long, long way from any degree of sovereignty. Does not that have at least a threat of affecting the sovereignty of the United States of America? Or, to put it another way, would we—would we, as the United States of America—be a part of the international trade order today called the United Nations, unless we had a veto along with four other superpowers? Are we giving away too much, and are you concerned, and have I properly described what you understand the World Trade Organization would do to resolve the dispute between Bangladesh and the United States of America?

Mr. ROHATYN. Well, Senator, all I can tell you is I had asked the representatives of the Trade Representatives Office to give me a little summary of these legal issues of sovereignty, and I am perfectly happy to put that in the record. But just on the particular issue you raised, and as I said, I am not a legal expert, I can read to

you the paragraph dealing with that particular issue that you raise, and then I will put the whole thing in the record.

What I am told is that secret tribunals will not be the deciding fate of U.S. laws. Congress and the public will have input into the U.S. submissions and access to those submissions. Reports will be public and our response to panel recommendations will be developed with the Congress. There will be access to nonconfidential summaries of other WTO member submissions. Most important, no WTO rulings can change U.S. or State law. Now, I do not know if that eases your concerns. I have read most of these things. They are very technical. They sound OK to me. It sounds reasonable.

Can I tell you that this is 100 percent? Of course not. All of these things are parts of a very large package deal, and all I can tell you, I think, is put this in the record as it has been given to me, Senator, and I am sure you are going to have witnesses here who are much more competent on that sort of thing and who can talk to you at length and in detail about these particular issues.

Senator EXON. Thank you, Felix.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you a lot.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much.

Mr. Rohatyn, I have always admired your work. And you testified many, many times when I served on the House Ways and Means Committee.

Mr. ROHATYN. And you were always very supportive of me and of some of the things that I was trying to do, Senator. And I appreciate it.

Senator DORGAN. Until today. [Laughter.]

Mr. ROHATYN. We will still be friends.

Senator DORGAN. Let me go through a couple of charts, if I might. Because, Mr. Chairman, I wanted to put some of these things in the record, but I do not want to do it with a lengthy statement. But I would like to get Mr. Rohatyn's observations about these. And I will hold this up so that you all can see it.

This is the past 19 years of U.S. merchandise trade deficits. The red line goes down because that signifies the deficit. The top here would be a zero balance. In 1975, we had a slight surplus. Every year since, you can see what has happened to the merchandise trade deficit in this country.

This is a pretty alarming chart. And if you look at the trends, they contain alarming trends. As I view and understand GATT, it is the same people, with the same philosophy, negotiating around the same set of circumstances, saying let us continue moving in the same direction, but let us go a little faster.

If one were to look at these trends, I am wondering how one would suggest that we ought to keep moving in the same direction, but do it with a little more speed. Are you alarmed by what you see here? Do you think we are moving in the right direction? Do you think this is a product of a trade philosophy that makes sense for this country?

Mr. ROHATYN. Senator, I guess I would put it somewhat differently. As I said in my statement, I was not very happy with our economic and trade policies of the seventies and even of the

eighties. I think we have entered a very new world—when the Berlin Wall came down, when communism stopped being a force in the world, and when we became the only economic and military superpower in the world.

And I think, over the last few years, we have begun to establish that economic superiority, as well as the military superiority. And I believe that—I do not like these numbers that you show me—but I believe that we will be better able to turn these numbers around by having full access to these new developing countries than by turning inward now.

Senator DORGAN. Mr. Rohatyn, can I simply observe that the nineties portend an even more serious problem than the seventies and the eighties. If you look at these lines, we are probably facing the second-worst trade deficit in American history this year. These things are not getting better; these things are getting worse and much worse.

And that is why I asked you about trends. It seems to me the same crowd with the same trade philosophy are saying now: believe us, accept us with this new trade agreement because it accelerates what we have been doing. And I say, if this sea of red ink here for America is what we have been doing, maybe we ought not be discussing how we can accelerate that. Maybe we ought to be discussing if there is not a different trade strategy that is better for this country.

Mr. ROHATYN. Well, Senator, if there is a better trade strategy, I think everybody would be happy to hear it.

Senator DORGAN. Well, we unfortunately cannot really debate that. Because we are on something called fast track, with the trade negotiation that is already completed. And we cannot even offer an amendment. So, that is one of our dilemmas.

Let me ask about a chart that shows something different. This chart shows U.S. workers' productivity and pay—or household income. The blue line measures productivity in the United States, and the red line measures household income. You will note from this chart that, just as you testified, we are more productive and more competitive. And I want to ask about the word "competitive" in a minute. But we are now more productive as a workforce, but that does not translate into more income. It translates, apparently, into less income for American households.

Can you tell me why you think greater productivity in our workforce translates into lower household income for the Americans?

Mr. ROHATYN. Well, as I said earlier, Senator, I think that the real problem that we have had in this country, which translates itself into political problems but is essentially an economic and social problems, has been that the real income of our people especially of working people—in this country has not really improved over the last 10, 15, 20 years.

Senator DORGAN. It is actually not that it has not improved.

Mr. ROHATYN. It has actually declined.

Senator DORGAN. It has actually declined.

Mr. ROHATYN. In real terms, yes.

Senator DORGAN. That is correct.

Mr. ROHATYN. Despite these productivity improvements.

Now, that goes back to I guess what I was trying to say earlier; that technology has created very, very big pressures on individual workers, on entire industries in this country, and that the benefits of productivity growth have not been shared with the people who actually make the product. But, actually, if you look at the reality of the distribution of wealth in this country, low inflation and relatively low interest rates over the last few years, plus improved productivities, have really benefited mostly the capital markets.

And so you have had a very big improvement—a huge increase in wealth of shareholders, stockholders, bondholders, which has not been shared by the workforce of the United States.

Senator DORGAN. So, this is sort of the economic expression of Bob Wills and the Texas Playboys music of the 1930's, where they said the little bee sucks the blossom, the big bee gets the honey; the little guy picks the cotton, the big guy gets the money.

What you see here is the ultimate expression of that in an economic system, where productivity goes up and family income goes down. And you are saying that the money went someplace. The money went to, as Thomas Jefferson called it, the moneyed aristocracy in America; is that correct? And so the working people make less, the moneyed aristocracy make more?

Mr. ROHATYN. What I am saying—and first of all, let me I think say again that I do not think that has anything to do with foreign competition. I think that has to do with technological development and with the way the ownership of securities in this country happens to take place.

Now, I think it is also fair to say that a lot of employees, a lot of workers of American businessmen are also part of their pension funds or own mutual funds and will, to some extent, benefit as a result of the increase in the value of their pension funds and their retirement funds.

And I think probably, but I do not know this, I think if you would look at the breakdown of income per industries and categories of workers in this country over the last few years, you will find that those in the high-tech companies, with higher skills, have done extremely well, and that they have probably also done very well. Because these are the companies that have afforded the largest amounts of stock ownership and stock options to their employees. And so they have benefited twice.

But that is an entirely different problem. And I think you have put your finger on the fundamental social and economic problem in this country, which is how you share the wealth of improved productivity and enable the average employee of an American company to increase his standard of living. Which is why Henry Ford, as I recall, put in the \$5 a day pay at that time.

Senator DORGAN. That is correct. And that gets to the central thesis of why I think this trade agreement is fundamentally bad for this country. It is, I think, an agreement negotiated largely for the benefit of international economic producers, who decided they would like very much to produce where it is very inexpensive to produce, access the cheapest possible labor in the world, and then take the product they produce from that and move it into an established marketplace.

The problem with that is it disconnects the stream of income from production, so that the consumers who work at a job to produce a product then have the income with which to clear that product from the shelf.

And I want to show you one additional chart, because I think it is also illustrative of this same problem. This is average per hour manufacturing wages. And this shows the manufacturing wages in the United States, Canada, Germany, France, Spain, Britain, and it goes down to India, Thailand, Sri Lanka, China, and other participants in this trade agreement.

And the point of it is a point that has been made by Sir James Goldsmith in testimony here, and I think a good point. If you are an international producer and have the opportunity for the same dollar to hire 1 American worker—he puts it in the context of a French worker—1 American worker, 20 workers from the Philippines, 40 workers from India, or 80 workers from China. For the same dollar, you have the opportunity of 1 American or 80 Chinese, 1 American or 40 Indians. If it is nonskilled work, why would a producer not want to access the cheapest possible labor, and then sell back into our country?

And do those who do that have no obligation to our marketplace when advantaging that kind of circumstance?

I see this trade agreement as a mechanism that says yes, this is just fine; this works because it is free trade. And the issue is: Are we "competitive"?

And the reason I showed you the other charts is you used in your testimony, on page 6, a discussion about the fact that we are more competitive. Indeed, we are, to the extent that I understand it. But one could say that if we had driven average wages in this country down to \$3 or \$1. But it would be largely irrelevant that we are more competitive; we are less well-off as a country.

So, the standard of whether we are competitive makes sense to me in the context of whether we are competitive in a circumstance in which we continue to have available good jobs for American workers.

And on page 7, you indicate one of the problems worthy of discussion is assistance for displaced workers. Now that is an east coast term for unemployed. Displaced workers means people who are going to lose their jobs.

And I have been trying desperately to get information from experts about how many of these so-called displaced workers do we expect to have? And I have not been able to find anyone who can give me an honest answer.

Could you, Mr. Rohatyn, tell me, do you have any notion of how many of these displaced workers or people who flat out lose their jobs we are going to have?

Mr. ROHATYN. No, I do not. I do not, Senator. But I believe, and as I said, I am very, very convinced of the fact that people are going to get hurt because of this. People have been hurt because of it. And I believe that you cannot argue for free trade, as I do, without saying that we have to do something to support people who get hurt.

What I am saying, on balance, is that I think that more people are helped than are hurt. And that on an overall basis, our econ-

omy is helped, our technology is helped, our impact in the rest of the world is maintained if we have open trade; and that we have to do whatever we have to do to provide education, training and other jobs, including the possibility of doing some public works in this country as part of an effort to relocate people who, as you said, are unemployed as a result of foreign competition. But that is also true of technology and it is also true of a lot of other things.

Senator DORGAN. Do you believe that the lower skilled American workers will probably see their wages diminish in this country as a result of this agreement?

Mr. ROHATYN. I do not know that they are going to do that as a result of this agreement. I think that they are going to do that possibly. If that happens, it will be as a result of simply technological improvement and the requirement for higher skills everywhere. I think that is going to be true all over the world, not just here.

Senator DORGAN. Well, technological improvement simply is a function of needing less people to work the same machines and produce more product.

Mr. ROHATYN. No, not necessarily.

Senator DORGAN. That does not relate to the amount of income you pay to the lower skilled workers.

Mr. ROHATYN. That is not necessarily true, Senator. It means that you will need more people to deal with computer assisted design machines. It means that you will need more people to deal in engineering development. It means you will need more people to work in writing software for Microsoft or doing animation for Disney. I mean that is what it means. And that is what we have to really deal with.

I mean I do not want to digress, but my wife spends a great deal of time in the public school system of the city of New York in the lower grades, in the elementary grades. And when you see what is happening in those schools, that is where it has to start.

Now, again, that is a digression, but that is where the world starts, Senator.

Senator DORGAN. In education.

Mr. ROHATYN. In education, yes.

Senator DORGAN. We do not disagree with that. But it also is a world in which people have to have jobs. And you have got to have opportunity. And my concern about this kind of a trade agreement, which is a so-called "free trade" agreement, is it is largely irrelevant to the question of the things that we have fought for all of this century in this country.

We have had enormous battles on the subject of what is the proper apportionment of income—the income streams that go in the form of rents and profits and wages? We have had enormous battles over that between labor and those who employ labor. We have had significant battles on the question of the employment of children and the working conditions in factories.

And that, as a result, has created a political equilibrium of sorts, of where we are in this country. And this trade agreement, in my judgment, with simply one snap of the switch, disembowels all of that.

Mr. ROHATYN. Senator, I can well understand your concerns. I think the chairman knows perfectly well that over the years I have probably been much more interventionist in general than most of my colleagues in the business world, who considered me some sort of a dangerous flake, as a matter of fact. And I have been totally open to issues of industrial policy, to having the Government take a much more active role in a lot of things, including trade. And I must tell you that over the last few years, I have come around to the view that, much as I share a lot of these concerns, I have come down on the other side of this issue.

Senator DORGAN. I have a couple of other charts.

Mr. ROHATYN. And, you know, as I said, that is a question of judgment. But Chairman Hollings knows where I come from.

Senator DORGAN. And I know where you come from as well. I have a couple of other charts, but they are even more depressing. So, I will save them for a later time.

Let me ask one other question if I might. It is my contention that this country, the markets, the Federal Reserve Board, the deep thinkers, the over-the-horizon viewers, and all of the folks who apparently matter in the creation of public policy, tend to focus on what we consume as a measure of economic health rather than what we produce. And that relates to this trade agreement, because this trade agreement relates to, in my judgment, where production—where a lot of production employing lower skilled workers will occur in the world in the future.

I am going down to the steps of the Federal Reserve Board at noon today to give a few words of encouragement to those who, like me, feel that the Fed is moving in the wrong direction. And you probably would not like to hear that either, Mr. Rohatyn. But I feel very strongly that the Fed and a range of us in this country are fixed on the question of what we consume as a measurement of how healthy this country is.

In my judgment, that is fundamentally wrong-headed. It is what we produce. The source of wealth, the source of income, the source of jobs, and future economic opportunity rests with what we produce.

Do you disagree with that?

Mr. ROHATYN. No, I do not disagree with that, Senator. And I must tell you that on issues such as interest rates and inflation, I tend to be probably a little bit less hawkish with respect to the so-called inflation threat in this country at this point. I do believe that we have to be careful about inflation and that we have to do everything we can to avoid it.

But I still do not see the evidence of inflation as starkly as a lot of people in my profession do. Because I do not see companies really getting prices. I do see these big improvements in productivity. And I do see a global economy and the winds of competition. And I would be a little bit more restrained in terms of seeing inflation unleashed here. Because I do not really see it as clearly as a lot of people seem to.

Senator DORGAN. Well, I appreciate that. That is a hopeful sign. One final question on the subject of production.

Mr. ROHATYN. That does not mean I am soft on inflation, Senator. I hasten to say, before I get run out of my business.

Senator DORGAN. No, I know you have to say that coming from where you come from.

Mr. ROHATYN. Yes.

Senator DORGAN. I understand that caveat.

Mr. ROHATYN. Thank you.

Senator DORGAN. And I would be surprised if you did not include it.

The question of production versus consumption. Most who view a trade agreement like this believe that it will lead to more production in less-developed countries, where you can access cheaper labor, especially unskilled labor. If that is true—do you believe that is the case—more production will occur more easily in areas where you can access cheaper labor?

Mr. ROHATYN. The way I view this thing, I would think that actually more consumption will take place in the developing world. That this thing will be front-loaded. That there will be big investment. That factories will be built, roads will be built. I mean this whole question of productivity is not just having 40 Vietnamese for the price of 1 American. It is having roads. It is having a telecommunication system. It is having banks. It is having all kinds of other things that go with it.

And it seems to me, by having this huge amount of people improve their standard of living and improve their consumption, it will benefit our economies. Because we will be selling into that. That would be my view of it.

Senator DORGAN. I understand the view that there will be more consumption in developing nations. The question is will there be more production?

Mr. ROHATYN. Certainly there will be more production.

Senator DORGAN. At the expense of developed nations?

Mr. ROHATYN. Not necessarily, Senator. Because, first of all, they will largely be dealing with their own—they will meet their own requirements. They will deal with their own regions. They will deal with other parts of the world. I do not think it is necessary that this is a zero-sum game; that if they improve their production and their productivity that it is at our expense. I do not buy that.

Senator DORGAN. Mr. Chairman, you have been very indulgent. May I ask one additional question?

The CHAIRMAN. Please do.

Mr. ROHATYN. I knew you would have another chart. [Laughter.]

Senator DORGAN. Let me go back to the first chart. The folks who brought us this, a trade policy that has resulted in enormous trade deficits, are now saying trust us, we want to give you a new chapter of the same textbook. And I just frankly am not willing to do that.

Do you feel, as an economist—you have a background in economics?

Mr. ROHATYN. No, sir.

Senator DORGAN. Oh, you do not?

Mr. ROHATYN. No, I was a physicist. I was a poor physicist, so I went into business. [Laughter.]

But that does not mean I have not read a lot of economics. I am sorry, I do not mean to be flip. But I just for the record wanted to make it clear that I am not an economist.

Senator DORGAN. So, we will stipulate you are a poor physicist. Are you a good economist?

Mr. ROHATYN. I do not really think so. [Laughter.]

Senator DORGAN. All right. Some people do.

Mr. ROHATYN. Now, I do not know many, frankly. [Laughter.]

Senator DORGAN. Some do. Then I shall not tell you that I taught economics at one point.

Mr. ROHATYN. Well, then I am sure I know one, Senator. [Laughter.]

Senator DORGAN. Is it your understanding that while one can make a case—not a very good case—that the Federal budget deficit is money we owe to ourselves, albeit unequally distributed which causes a major problem—the trade deficit, an accumulated trade deficit is a deficit that ultimately will be repaid by a lower standard of living in the United States?

Mr. ROHATYN. Well, first of all, I think I would question the fact that the trade deficit is money that we owe to ourselves, since we owe—

Senator DORGAN. No, not the trade deficit.

Mr. ROHATYN. No, I mean that the Federal budget deficit is money we owe to ourselves, since we finance this by selling \$600 billion of bonds to foreigners. So, to begin with, we owe \$600 billion to people who live abroad. I mean that is a fact of life.

Senator DORGAN. Is the trade deficit that will necessarily result in a lower standard of living in this country to repay?

Mr. ROHATYN. I am not sure, Senator. I think that, more and more, we are going into global flows of capital as well as trade. And we could probably sustain trade deficits more easily if we had big inflows of foreign capital to finance ourselves and to finance it than if, at the same time, we have to borrow abroad to finance our budget deficits.

I think we have to clearly reduce our trade deficit. And as I said earlier, I think one of the areas where we do not seem to be paying a hell of a lot of attention is our imports of crude oil, which are zipping up, and which I think are both a security problem and a kind of silly subsidy of cheap energy.

Senator DORGAN. The bottom 60 percent of the American families earn less real income today than they did 10 years ago. Does that in your judgment relate to the trade deficits I have just shown you on the chart?

Mr. ROHATYN. It may relate to the trade deficit, but I think it relates more to technology and to the fact that we have not invested in those things we should invest in—namely, education, not having these budget deficits, providing more benefits of productivity improvements to working people than we have done.

Senator DORGAN. Well, Mr. Rohatyn, as always, you provide a thoughtful perspective, and I appreciate your testimony.

Mr. ROHATYN. Thank you, Senator.

The CHAIRMAN. Thank you.

Senator Bingaman.

Senator BINGAMAN. Thank you very much, Mr. Chairman. I appreciate the chance to ask a few questions.

Mr. Rohatyn, let me ask, on page 9 of your testimony, you say the current weakness of the dollar is one of the most serious eco-

conomic problems facing the country. Is not also the current weakness of the dollar one of the reasons we are being successful in our export strategy?

Mr. ROHATYN. I think that is probably overstated, Senator. And, again, there is a just measure in all things. You do not have to have the dollar at 240 yen. And at the same time, you do not have to have it at 90.

I think we could be very competitive with a somewhat stronger dollar. And I would argue probably that I would pay the price of a stronger dollar, in terms of requiring a larger effort on the part of our manufacturing sector, in exchange for making it a little easier for us to finance our foreign debt, and not to run the risk of having to push interest rates much, much higher as part of the refinancing effort of our debt.

As I said, these are judgment calls. But foreign exchange rates actually are a factor—and I am sure my friend, Jimmy Goldsmith, can talk to you much more intelligently than I can on this subject—foreign exchange rates are as much a factor of speculation and psychology than they are actually a factor of technical—they are both. And I think the psychology and the weakness of the dollar has been, to some extent, a matter of speculation and the fact that people have assumed that we would let the dollar go lower in order to help our trade balance. Which I think is a mistake.

Senator BINGAMAN. Let me ask about our trade deficit with China. It seems to me, whenever we talk about the overall trade imbalance that we have with the rest of the world, people say, well, the trade deficit related to imported oil, that is a separate problem. And then they say the trade deficit related to Japan, that is a separate problem.

I would argue the trade deficit related to China may be a separate problem. There is an editorial in the New York Times this morning talking about how the Chinese bloc imports with layers of testing and licensing procedures. They have dallied in making their rules clear—on and on—citing problems.

Do we need to have a separate strategy to deal with this growing trade deficit with China?

It strikes me that when you look at where the trade deficit continues to escalate—our trade deficit—the trade deficit with China is by far the fastest growing of the various problems we face.

What is your thought on that?

Mr. ROHATYN. Well, I think that is a fair statement, Senator. As I understand it, we are refusing to allow China to become a member of the WTO until they change some of their ways and some of their protectionist measures. And I think we should be very tough on that.

Senator BINGAMAN. How does that effect—I mean we have most-favored-nation status with China—how does the failure to let them join WTO punish them in an effective way?

I can understand that they would like the status of being part of GATT. But, other than that, is there really an economic burden that we are imposing upon them by refusing to go along with that?

Mr. ROHATYN. Well, I think there is some, Senator. I think mostly China is going to probably need us and need our technology and need our capital—probably more than we need them. And it would

seem to me, again, that we are kind of overlooking the powerful position we have in the world today, which really we did not have 10 years ago, or we did not have when the world was bipolar; and that we should make use of that, and we can.

And this is a problem that has to be addressed. But I think we can do so within the framework of these agreements, as I understand them.

Senator BINGAMAN. I will stop with that, Mr. Chairman. I know you want to get on with this hearing.

Thank you very much.

The CHAIRMAN. Thank you very much, Senator.

Right to the point. Let me ask, Mr. Rohatyn, is it really the fact that we keep raising these interest rates so they will keep buying our Treasury instruments?

I mean it has nothing much to do with inflation; it has way, way more to do with selling those bonds. Was that not your testimony at a different hearing before a different committee earlier this year?

It fascinated me. I thought it was an outstanding statement that the Japanese used to buy about one-third of our Treasury instruments, and that is not occurring any more.

And it looks to me, Senator Bingaman, that Secretary Bentsen has been talking down the dollar. Egads. No, he was not going to interfere he said for the whole first year of the Clinton administration.

It is down at its lowest ever, on the one hand. And yet it had not worked; the trade deficit has increased.

And then over here, I keep hearing, keep on ratcheting up the interest rate. And some of the wise financiers like yourself say, look, we have got to sell and we have got to keep that up high so they will continue to buy. Otherwise, we will really be in trouble.

What is your comment?

Mr. ROHATYN. I say that is absolutely right, Senator. I think we are in very tough shape. But once you become mortgaged, once you become dependent, as I think in Tennessee Williams somebody said, on the kindness of strangers, it is a very dangerous way to live.

The CHAIRMAN. Well, you and I are cut out of the same cloth. I keep on hearing all this silly talk relative to how we are going to have a tax cut and we are going to increase defense, and then we are going to cut the deficit. You cannot get the facts in the newspaper, but the entire domestic spending is \$549 billion—\$243 billion is defense, and \$276 billion is domestic discretionary spending. The interest cost on the national debt is \$311 billion. If you eliminated all domestic discretionary we would still have a deficit. The Republicans are going to save, save, you know. They use this lingo and everybody goes merrily down the road. I have had to recommend a value-added tax dedicated to the deficit and debt, and continue to do so because you cannot balance the budget without additional revenues. You mentioned the gas tax. If you had a value-added tax, that would be on energy, as well.

But I see our security and strength as a nation like on a three-legged stool. The one leg are the values as a country, which is very strong—feeding Somalia, building democracy; the second, our mili-

tary power, which is unquestioned; the third is our economic leg, which is fractured, intentionally fractured in that we sacrificed this economy over the years trying to build capitalism the world around, to defeat communism. Now, they come to us with the 8 years of GATT negotiations that President Reagan started, President Bush continued, almost had it, now President Clinton's got it. They do not recognize the change in the opportunity and the need for a Marshall Plan here in the United States to restructure and rebuild, which you have been very strong on.

And what I see in that statement of yours, almost, is that promotion of prosperity is today a, if not the, central challenge of foreign policy. I think the President is really on economic policy. I do not think that is foreign policy at all, anymore. They are in charge, as I have described. There is a hole in his pocket and a tin cup in his hand, and we have got a deficit in the balance of trade that does not show on the Senator's chart with every one of those Asian countries. They are winning, and they have got the loser telling them how to play. They said here comes the loser—well, really, here comes Santa Claus. We are going to see how much we are going to get out of this deal.

And what really happens is that the poor of the rich nation are subsidizing the rich of the poor nation. They are not getting it. We had a series on child labor here from the Boston Globe from mid-summer about Tangarang, Indonesia. Now, that goes right to the demonstrations they had yesterday facing the President. The Boston Globe talked about the little girl Yati who works at the Reebok factory 40 hours a week, plus 90 hours. She gets \$80 a month for the whole month. She goes home from the well-lit factory to her 10-by-12-foot shack with dirty walls and alive with ghekkos lizards. I do not know what those are. "There is no furniture, so Yati and her two roommates sleep on a mud and tile floor. Through a translator, Yati asked how much Reeboks cost the United States. The answer is on the bottom line of her monthly pay stub." She works the whole thing for the cost of one shoe—one pair of shoes—and those in the streets demonstrating are not trying to get a right to vote. They are trying to get a right to eat.

It is the rich getting richer over there. And then back home we look, and you do not even have to read the charts. The USA Today just 2 weeks before the election had a lead article, "Voters in a Stoning Kind of Mood." There is a deepseated unease about the spotty recovery of the economy despite statistics suggesting it is better. "I am worried about my job every day. It used to be if you worked for several years for a company and kept your nose clean you could be confident you would have a job for the rest of your life. Now, you can lose your job at any time," says Richard Law, 57, of Raymond, NH, medical technician. That is the problem. You will not find that in a poll. We get these polls in politics. That is all they follow, and they talk about term limits and all this political nonsense where they do not really talk about the real problem confronting the country.

Going right to the point, not only in Indonesia are they struggling. And that is why in Chiapas, the farmers, they are going to lose out with NAFTA. Millions of farmers are going to try to get into the city, into trouble, unemployment, and into crime, and you

have got to emphasize again about the social instability, tremendous instability brought about.

You see, we had a study, for example, on textiles by the Wharton School. We are going to lose 1.4 million textile jobs. Now, you have got 96,000 garment workers in downtown New York, those sewing jobs. They have got, in Watts, 63,000. Those jobs are gone. I can tell you that right now, with NAFTA and with GATT. And you have got these Presidential candidates running around promoting enterprise zones, enterprise zones, enterprise zones. Heck, we have got the enterprise in the zone, if they would only leave it there. But the trade policy says you are going to get rid of those, and so we politicians talk about how we are against crime. "I am for three strikes and you're out. Let us build more prisons"—we do not need to build more prisons. We need to keep the jobs. Therein is the problem.

Time magazine had an article on October 24: "Boom for Whom?" For example, I just keep on reading, "In 1993 the top 100 U.S. electronics companies eliminated 480,000 jobs." They quote John Stern of the American Electronics. "The American lifestyle is supported by manufacturing jobs. They are the entry point into the middle class for women and minorities, and anyone else climbing the ladder who does not have the contacts or education to become a software engineer. These people cannot lead a middle class life in the service jobs that are left over."

The article continues: "There is much evidence, in fact, that the United States is developing something of a two-tiered society." It is all right in front of us. And you ask about the policy. Very easy, just deal in kind. Trade is trade. We learned in contracts I, "a sound article for a sound price." Nothing about politics or anything else of that kind, we know their price, and we do not have one. We do not have a policy. Just dump it right in there.

Specifically, I have passed the textile bill five times, and said we will throw the textile bill out of the window if they would only enforce the law. Now, you have got a bunch that comes to town continually lectured by the New York financial world on free trade, free trade, free trade, when it is not working. And you insist upon it, you folks come in and insist upon it, but there is no such thing. But the free trade has just gotten us, according to the charts and all the articles in the country. We are going down the tubes, and you think the President out in Indonesia is leading, when he is losing. They do not even know they are losing. They think they are leading.

Therein is our problem. The policy is to enforce those laws. Zenith tried it, went all the way to the Supreme Court, they reversed them. Houdaille, an American compnay, went all the way to the courts and after 3 years of Washington lawyers going in, President Reagan said "No, we have got a special relationship with Nakasone and we will not provide you relief." We have got example after example after example of over the years trying to get this Government to enact a competitive trade policy, because the Government is counseled by the best of the best—namely, you folks up on the market—and what happens? We follow your advice and we are going out of business, and the rich are getting richer but nobody is getting a job. That is your problem.

Mr. ROHATYN. Well, Mr. Chairman, I think we will just—we are having an argument that we are not going to close on because we disagree respectfully on that.

The CHAIRMAN. Well then, let me respectfully ask you just one question, then, because I know the others want to ask questions. I remember we got into the matter here of the financial markets, and the statement was made that after all there are \$5 trillion a year that is invested all over the world. Now, this is something you are expert in. This chain must not be tampered with, you say. Well, you did not get financial services in the GATT in December when they agreed on this Uruguay Round GATT agreement, because they would not tamper with it. That is the whole point. And we never got anything on financial services. And our market is dealing in short-term profits. Their market is in dealing in long-term market share. We are really producing financial derivatives, and they are making VCR's and robotics, computers, et cetera.

Chrysler's biggest shareholder seeks more profits says the business page of the Washington Post today. There is the problem. There it is right there, that you ought to change that securities exchange law that was made during the depression. Why do we not update that for long-term investment and cut out the quarterly reports and everything else, if we are going to get competitive? We used to have Boone Pickens come around here. He bought 26 percent of a Japanese company and thought he could get into the corporate world of Japan. When they would not even let him in the stockholders meeting, he thought he would embarrass them. He said, "Well you know, I am from Texas, and my wife, under community property, she has got one-half of it, so she has got 13 percent. Will you not let Mrs. Pickens into the stockholders meeting?" "Get out," they said. That is what we have got to start talking about around this town instead of just hoping for a change.

Mr. ROHATYN. Senator, I am perfectly supportive of anything you want to try to do to encourage long-term investment as opposed to speculation. And if we could do away with one-half the statistics that we are flooded with in this country, that would also be a big improvement, along with political polling which I think is one of the great poisons of our system.

The CHAIRMAN. It is a cancer.

Mr. ROHATYN. But you know, I can only do with one thing at a time, here. And I thank you for your courtesy.

The CHAIRMAN. Well, just one thing. That being the cancer, our friends here have got to understand why it is a cancer because I have been in the game 40 years. To lead, you have got to educate. You have got to study the problems, you have got to talk to the Felix Rohatyn's and the other wise men of the land, once you get the job. And then you decide on the policy and you have got to educate the people as to the need for your particular policy, your program, to solve these problems. The President does not have any chance to lead, or really to educate. The media get just a memo that goes from his budget director over to his main office, and egads, they have got seven options in it and he has had to deny and refute all seven options before he can even develop a program for next January. I mean, it is whoopee, and everybody throws up their hands. So, you cannot lead, you cannot educate, you cannot

get your leaders from both sides to all agree and know there are some impossible parts of it so you have to amend it, or whatever else it is, but then lead. But there is no chance of leading with the polling.

Finally, Harry Truman—you say give us a policy—Harry Truman had O.S.S. Casey, and when he took over at the death of Roosevelt he came upstairs there and he said “Mr. President, intelligence reports this, and this ought to be the policy.” Then the Secretary of State said “Oh, no, that is not in our foreign policy. That is not in our interest.” And the Defense Secretary said “Wait a minute, that cannot go. That is not our security interest.” So, Harry Truman said “I am going to put you downstairs all together.” And he put in Secretary of Defense and State, intelligence, the whole kit and caboodle, and created the National Security Council, by Executive order. Out of that came the Atlantic Alliance, North Atlantic Treaty Organization, the Truman Doctrine, the Marshall Plan, and all the vision. He could not run a haberdashery, but he knew how to run Government.

We need a national economic council. Do not tell me they have got one over at the White House. That crowd is working against us. We need one that really believes in a competitive trade policy, and not that we are the Santa Claus of the world and are going to give away the store in order to be friendly in foreign policy. There is the dichotomy. That is our real problem right now. They think they are leading when they are losing. They do not even know the difference.

Thank you very much.

Mr. ROHATYN. Thank you, Senator, for a most enjoyable morning. [Laughter.]

Senator EXON. Mr. Rohatyn, I am going to be very brief, because you have been very patient with us and I appreciate the fact that you have been here. And I hope that you understand that the questions that we have been putting to you really sincerely are attempting—

Mr. ROHATYN. I certainly do, Senator. I would not be here otherwise. I did not think I was coming here for a morning of charm. [Laughter.]

Senator EXON. We collectively think you are a good guy. And I know it.

Mr. ROHATYN. Thank you.

Senator EXON. You are not always right, but we think you are a good guy.

Mr. ROHATYN. That is right. I am devoted to the chairman, and I have a great admiration for you.

Senator EXON. Two things, and I will ask a joint question to expedite things. No. 1, there has been some speculation behind the scenes that I have heard about that the Republicans maybe in the House, not so much in the Senate, may decide that the best thing to do is to defer the decision on GATT from the scheduled vote at the end of November and December 1 in the U.S. Senate and put that off until next year. And at that time, as I understand, some of the rumored strategy might be that the Republicans, therefore, would at the beginning of next year repass the expedited procedures and maybe set June 1 or July 1, something like that, as the

time that would run out. This would give them a chance as the new majority to put their mark in whatever bill is passed. Just let me ask you, if that rumor would come to pass, do you think that that would be particularly harmful, or would it just be a delay in enacting what you think should be enacted?

Second: Let me ask you about what I addressed to some extent in my questions in the first round, and that was with regard to the sovereignty of the United States of America. Under your understanding, supposing going back to the example that I cited with the United States and Bangladesh not being able to agree and the World Trade Organization, through the council that you referenced one paragraph in that you thought addressed it, supposing that does not work. What are the arrangements, what would be the arrangement, as you understand it, for the United States to withdraw from GATT if they felt they were not being fairly treated and if the sovereignty of the United States was being seriously impaired in trade matters? How do we get out?

Mr. ROHATYN. Senator, as I understand it, and you really should get witnesses here, I am sure, from the Department or from the Trade Representative, people who have negotiated this, but if we have a problem with any particular country and we do not agree with a particular decision, we can both, vis-a-vis that particular country, withdraw from the particular problem area.

Let me go back to the first question you posed with respect to a delay. As I think I indicated in my testimony, I would think that a delay would be extremely harmful. You know, I make my living not doing this but doing mergers and doing deals, and I have spent 40 years doing that, and this is a very complicated deal. And there comes a point when you have negotiated everything and you have looked at everything and all the points have been done and you should either do the deal or forget it. And I would think you are at that point. I think the whole world is waiting for it. We are the last country up, and I do not see anything that would indicate that if we cannot do it now we can do it 6 months from now. And I would strongly say to you at that point, Senator, vote it up or down.

Senator EXON. Thank you, Mr. Rohatyn. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very, very much. We are the first country up in that none of the industrialized countries have ratified, and we have got until July 1 next year.

But I cannot thank you enough. You really have favored the committee at expense to you, and we are very grateful to you.

Mr. ROHATYN. Thank you, Mr. Chairman.

The CHAIRMAN. Yes, sir. Thank you.

If Sir James Goldsmith is here, come forward. There are the friends. They can have dinner tonight together.

Sir James, once again we are grateful to you for gracing our committee. Really, as old Robert Hutchins in Chicago said years back on education, he said "the purpose was to unsettle the minds and stimulate the youth of America." Well, you have unsettled and stimulated at least several Senators here on the committee, and others that have seen the presentation you have made on C-SPAN. You had to be delayed, of course, in your flight, and our hope at

the time was to have you both together and then we could really hear the comments back and forth. I had to raise some of the questions myself I am confident you would have raised.

Do you have an opening statement or a comment? Let us have what opening comments you have, and then the questions from the members.

STATEMENT OF SIR JAMES GOLDSMITH, MEMBER, EUROPEAN PARLIAMENT, STRASBOURG, FRANCE

Sir GOLDSMITH. Mr. Chairman, thank you for inviting me back.

First, I want to make it clear, I think you know, Mr. Chairman, that I was in business, I believe in free markets, I believe in free enterprise, and I believe the purpose of the economy is not just to improve indices but to improve the state of the nation, yours, mine. So, I am not an antifree market man nor an antifree enterprise man. Quite the contrary.

Felix, as you saw, is an old friend of mine. In fact, he has been my banker on and off for then past 20 years or more. But I am in total disagreement with him. What you heard today is the view from big business, of which I was part, and I believe the view from society in general is totally different. I believe it to be so different that I came out of retirement to start a political party in Europe to become chairman of one of the nine parliamentary groups in the European Parliament to fight against what I believe to be one of the most destructive issues, proposals, ever put before your assembly or any other assembly.

In fact, I was watching television last night and I saw Senator Moynihan. He was there with Representative Newt Gingrich, and the words he used were probably the most important vote of the decade. It could hardly be more important.

I would like, if I may, to comment on some of the points that my friend Felix made.

When talking about the loss of manufacturing jobs, all the figures you gave, they put that down largely to productivity. But in the last few months we have seen Boeing, IBM, Advanced Microsystems, as well as joining all the other companies like Hewlett Packard, going offshore to get cheap labor. That has nothing to do with productivity, Mr. Chairman. That is moving to get the cheap labor, 40 times cheaper. And please do not think this is unskilled jobs. These are skilled jobs. These are high-technology jobs going there. Of course, they are the unskilled jobs, but the skilled ones are going to highly skilled people, and they are moving offshore. And if you think that is productivity, then I think you would be wrong. Of course, there is an increase in productivity, and of course that puts pressure in the job market. But why accentuate that pressure manifold at the very time when you have got the pressure by encouraging and by creating a system that forces people to go offshore?

I would also remind you that not only are jobs being lost but I would confirm the figures that we all know. It was not a marginal drop in earnings that global free trade has brought in the United States. In the United States, before NAFTA has its effect, and before GATT which is so much bigger than NAFTA has its effect, your hourly wages, according to the Labor Department statistics,

are 13.4 percent down in the last 20 years. And your weekly ones are 19.2 percent down.

Then Felix also mentioned how competitive the States have become. Well, surely the measure of competitiveness is the balance of trade. And as you, Senator, have pointed out, if you have the second-worst balance of trade in history, \$150 billion, that is not being competitive in world markets.

Then there was a question of foreign investment. There was a question of the words we used, attracting foreign investment in the United States, this apparent inflow of foreign investment. Well, as businessmen and U.S. policymakers obviously have to take both sides of the equation into account, there is a massive foreign outflow of investment, net. Take foreign inflow, take foreign outflow, the balance is negative.

And then we heard Felix's testimony on the "trillions of dollars"—his words—that now move around in the global economy. He rightly said the global financial marketplace was totally integrated. In his testimony he talks about \$500 billion to be invested in China. And then what does he say? He said "What America needs," and no doubt this is true about Europe, as well, "is an increased rate of savings." What for? To invest in China? To invest among those trillions that have to go out? Why do you need them? You need them right here, just like we need them right where we are. We cannot afford a hemorrhage. We cannot increase our rates of savings just to invest them elsewhere, and where we bleed to death in terms of capital and we bleed to death in terms of jobs.

And this is the big point, Mr. Chairman. What we are witnessing is the divorce of the interests of the major corporations and the interests of society as a whole. It used to be said that "what was good for General Motors"—and we all believed it, it probably was true—"was good for the United States." That is no longer true. The transnational corporations, Mr. Chairman—I just brought some figures came out recently—the now have \$4.8 trillion per annum in sales. They account for one-third of global output. The largest 100 account for one-third of all foreign direct investment. Now, where do you think the bulk of that investment is going? It is going where it earns the most. There is no other way it can go. What chief executive can invest otherwise, Mr. Chairman?

So if, as you have heard today, you have freedom of movement of capital, freedom of movement of technology, and you can employ people 40 or 50 times cheaper who are skilled, and you can import their products back anywhere in the world, that is the basis of global free trade, how can those investments, how can these transnational companies who have \$4.8 trillion of sales, invest anywhere other than where it is cheapest and where their return is greatest? Because if they do not, the system that you and your colleagues would be voting for if you pass it, forces them to do it; otherwise, they go bankrupt.

So, we have a system for the moment being proposed, you here, we in Europe, it is the same system with the same effects on us, which will result in massive unemployment, massive hemorrhaging of jobs and capital, but which will increase corporate profits. And it is believed by economists that you can measure the health of an economy by the size of corporate profits. Now, I am for corporate

profits. All my business life I have worked to increase profitability. But I believe that when you get to a system whereby so as to get the best corporate profits you have to leave your own country, you have to say to your own sales force "Goodbye, we cannot use you anymore, you are too expensive, you have got unions, you want holidays, you want protection," so we are going offshore, and you destroy your own nation, I think that is short-term thinking. That is the real short-term investment, because that is like making a profit on the deck of the Titanic playing cards, and in a clever as opposed to wise way.

In Europe, we have less flexibility than you have here in the States, so rather than take a big hit, these reduction in wages, before your recent actions, before NAFTA, before GATT, these big hits on wages, we in Europe tried to protect wages, so we lost jobs, but nonetheless, let me just give you some figures.

Two developed countries, the U.K. and France, let me remind you that in France, since we progressively moved toward this global free trade, the economy rose by 80 percent during the 20-year period, a fine performance, and unemployment went from 420,000 to 5.1 million.

Let me give you if I may, Mr. Chairman, for the United Kingdom, between 1971 and 1991, gross national product rose by 49.5 percent, but the number of people living in poverty has risen from 6.6 to 13.6 million. The number of children being brought up in poverty—this is a developed country, one of the great old economies and nations—4.1 million, 32 percent of children in the land, officially designated as living in poverty.

Now, what good is it, Mr. Chairman, to have an economy that grows well where everybody and all the economists can say, "How fantastic," where the politicians can say, "We are going to get extra growth," where businessmen can say, "Our profits are up," if the number of people—and the markets are at an all-time high, Mr. Chairman, in England—the number of people living in poverty, from 6.6 to 13.6 million, and the number of children living in poverty, 1 in 3, the number of people being employed in France from 420,000 to 5.1 million.

Now, I am not here as a bleeding heart liberal. I am a hard-headed realist, and it is my view that if we try and make profits and at the same time destroy our nations, no one will benefit from it, even those who make the profits.

Mr. Chairman, those are the points that I wanted to respond to.

The CHAIRMAN. Well, you said, this is like making the policy on the deck of the Titanic. I agree with you. There are a lot of other points made by our distinguished former witness, and talking about how we had to reach out, we had to do this and do that with the U.S. level for the developing countries out in the Pacific Rim. There is just so much the economy can stand. It sounds like almost a Vietnam policy. In other words, we have got to destroy our economy to save the Free World. It is the same kind of trade policy apparently that we have.

The investment is going abroad—I do not know whether you were here, but the investment is going, according to the most recent issue of Business Week, \$69 billion offshore, an increase of 40 percent down into Mexico itself.

Sir GOLDSMITH. Mr. Chairman, you just have to look at Felix Rohatyn's testimony. \$500 billion is estimated in a few years for China.

The CHAIRMAN. You talked about the ones in England. We also know how displaced workers have been faring; 4.5 million people lost permanent jobs from 1991 through 1993 in the United States. They talk about the good news, how some were reemployed, but one-fifth of the displaced workers were still looking for work—13 percent had left the labor force.

Further, some 47 percent of those back at full-time jobs were making less than before, and nearly one-third of this group suffered pay cuts of 20 percent or more, and that is not counting those who became self-employed, or the 9 percent of former full-timers who were working part-time. These figures are from Business Week, of November 14, with its recent issue to the effect that we were really going out of business.

Let me yield to Senator Exon.

Sir GOLDSMITH. Can I just comment on that point, Senator?

The CHAIRMAN. We have the same thing going here. I mean, I have a great affection for him, and I have made the comment about the service economy. Service economy, do not worry. That is what the Harvard up-East thinkers were telling us.

In fact, I was at Renaissance with President Clinton when Michael Porter from Harvard was there, and he was still lecturing on the comparative advantage, David Ricardo, and I just looked and said, "Yeah, the comparative advantage. That is why BMW is coming to South Carolina. We have never made an automobile in our history." I mean, come on. It is the wage advantage—\$30 in Munich, \$15 in Spartanburg, and yes, we make an outstanding automobile.

So, these up in Washington say "retrain, retrain." I can train them to make automobiles. I can make computers. I have got digital down there. I have got 40 Japanese plants in South Carolina, including Fuji. I am in pharmaceuticals with Hoffman-LaRoche. Do not tell me, I need more training. It is the people with training who are losing their jobs. They do not seem to understand it.

But let me hear your comment. I am sorry.

Sir GOLDSMITH. The only comment I wanted to make was the question of inflation was brought up. The biggest single component of inflation, I think it is all but about two-thirds is wages.

The reason why this time there has been a recovery in indices and GNP despite the very substantial pressure downward pressure on interest rates and facilitating credit for the banking system is because salaries, earnings, have either gone down or risen very little relative to the period of the recovery, and that is the whole philosophy is we can keep inflation down by keeping wages down.

And we have forgotten the purpose of the economy, which is to enrich, to create a stable society, and to include the population, the vast number of people in active life, and instead we believe that if we can reduce salaries we can keep inflation down. That is the wrong way around. We have just forgotten what the economy is about, what its purpose is.

The CHAIRMAN. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. Sir James Goldsmith, welcome to the Commerce Committee. The last time you were here, I wanted to be here, but I had an Armed Services meeting at the same time that was also very important, and I could not make it.

Thanks for coming back again. I have listened with great interest to your opening statement. I do not know how much, when you came in, with the previous witness—I will ask you some of the same questions, but basically I appreciate very much the fact that you have come here today.

We have not always agreed. I do not know whether you remember or not, but there was a time when you were attempting to take over the Goodyear Corp., and since Goodyear was very prominent in our economy on a parochial matter I opposed you very much, but I have always done some study of you, and I have always admired your freewheeling spirit with regard to getting things done and creating jobs.

Let me start out, if I can, with you, and I will abbreviate the question because I asked it of the previous witness. One of the concerns that I have on this matter, and I have not made up my mind, is the part of the World Trade Organization that I am afraid gives up the sovereignty of the United States of America.

I would quickly say that I suspect your country, Great Britain, and the United States would not be in the United Nations had they not had veto powers. It seems to me like the one-man-one-vote principle is being carried too far in this particular matter.

Particularly, I am concerned about the fact that one-man-one-vote, if Bangladesh, one of the 113 nations, and the United States had a trade dispute, as I understand it, if they could not reconcile this through the usual procedure it goes to a three-member commission appointed by the GATT called the World Trade Organization, who meet in secret and take testimony in secret, and make their decision.

And if the decision would be against the United States of America in this instance, the only way the United States of America could overturn that would be to go to the 113 nation total agreement and get unanimous support to override whatever decision was made by that three-member panel, including Bangladesh, who brought the action.

Is that a fair interpretation of the concern that I state? Do you see it that way?

Sir GOLDSMITH. Senator, there is absolutely no doubt whatsoever that the World Trade Organization is a major diminution of sovereignty.

Now, the exact mechanisms—in fact, I believe the Director General can try and settle the problem beforehand. For the same reasons as Felix Rohatyn will not wish to get into the same mechanisms, I will not, either.

I have also read a lot about it. I am on the Foreign Relations Committee of the European Parliament, and I have tried to study the issues, but the one thing which is certain is, bottom line, this is giving up national sovereignty. It cannot be otherwise. Otherwise, why would it exist? What is its purpose?

Its only purpose is to impose discipline on all the nations to accept a trading system, and that that discipline should be under the control of all the nations that participate on a one-vote-one-nation basis, full stop. That is diminution and dilution of sovereignty.

The exact technical mechanisms, legal mechanisms I would rather avoid, because they are too technical.

Senator EXON. Thank you.

Let me—if you can, explain to me why people in whom we have had a great deal of confidence over the years—I started out with President Carter and President Reagan and President Bush, and now President Clinton, and all of their key advisors. I mean, that is a pretty impressive list of people who think this is a good proposition for the world, and particularly America. How do you explain what I assume you think is the wrong opinion by all of those individuals that I just mentioned?

Sir GOLDSMITH. Senator, the Uruguay Round, the negotiations for the Uruguay Round started 8 years ago. The world has changed totally. GATT, of course, started after the war in 1949. The world has changed totally.

Now, what, for reasons which the chairman mentioned, we have not focused on—I think you did as well, Senator—is the alternatives, and I think there was other conversation of the alternatives.

The alternatives are not just closing the market, becoming protectionist. The alternatives are not saying we are now going into protection and we are going to isolate ourselves from the world, each one of you.

The alternative is to have regional trading blocs which have similar economies so we are not trying to make our labor forces compete with people whose labor costs 2 percent of theirs, and therefore destroying them, and reducing their salaries and eliminating their jobs, but having negotiated, bilateral agreements between trading blocs so that each region, each nation imports those products that it needs and not those products that destroy its jobs.

Now, that is what was the case 8 or 10 years ago. The regions we are talking about now, NAFTA, or Europe, are vast areas. We have never experienced trading blocs of these sizes, free trade regions.

Nobody thought, when these negotiations started, that communism would collapse before the negotiations were signed, that China and Vietnam and all the Soviet nations would be part of it, and all the other countries who were blocked with their socialist ideas. It has all happened.

You have had a massive, total historic shift, and you are on the same track as though it never existed, and you are being told, "Sign it now," because if you read the document it is going to be too late. I mean, this is the greatest—as Senator Moynihan said, the most important piece of legislation.

How can there be anything more important than creating a free trade area, not with Mexico and Canada, which is already important, but creating a free trade area with China, and India, and Vietnam, and Bangladesh, and all the others, 4 billion new people, all this has suddenly happened, and the negotiations are going on as though nothing has occurred.

That is why, Senator, people who were entirely reputable and wise were for global free trade before, as I was, but who have to open their eyes to reality today and say, what was global free trade in those days is regional free trade today.

Senator EXON. My last question has to do with a key statement you made in your opening statement, and that is with regard to massive, potential massive unemployment in the United States that I think has not been looked at, Mr. Chairman, as much as we should, and I would like to ask this question in the context of a few lessons in history.

You are a citizen of Great Britain. Certainly, I think that we would recognize that—those of us who have done some study of history would recognize the situation of the United States of America, once a colony of Great Britain, and Great Britain itself, are extensively different, because over the years Great Britain had depended upon its vast fleet, its countries that it controlled around the world, and there was a British Empire, so to speak.

That was never the case with America, because we were more self-sufficient and had more natural resources, obviously, than you did, but certainly I think that we ought to at least take a look at what I think has been a demise, to a large extent, of the working class of people that once had that small island over there a very bristling and bustling economy, smokestack industries that are now essentially gone.

It brings me to a question that I think will give you an opportunity to expound a little bit more on what you have said with regard to massive unemployment. I certainly am profoundly troubled with the economists' view of low-wage and low-skilled workers as somewhat disposable.

I remember an America where hard work would earn a decent day's wage. Today, a decent day's work and goodwill do not seem to go as far as they once did. It is interesting that this same Congress passed a massive crime bill, and the next Congress will consider welfare reform.

It is often said that there are a few of our local social ills that would not be solved with good jobs. Do you agree with that, and what will the GATT agreement do to those families barely getting on by both mom and dad working full-time in relatively low-skilled jobs, or medium-skilled jobs that I suspect will even have more effect on what we generally refer to as middle America? Are they not at grave risk here?

Sir GOLDSMITH. Well, Senator, when I was young, I was taught, as we all were, that if we managed to create extraordinary material prosperity, we would solve our problems, and we were brought up in the belief that there was an inevitability of progress, progress of wealth, progress of stability, progress of civilization.

Well, during the last 50 years, since I have been more or less an adult, we have had the greatest period of economic prosperity, economic growth, in history. We have succeeded beyond our wildest dreams. The economy of the United States has soared in real terms four or five times up, and throughout the Western World, England a bit less but still fantastic, and France, just as much.

And what has happened? Have we solved our problems? Are our towns more stable, are our families more stable, is there less crime,

less people in prisons, are there more people in permanent and noble employment? What have we done?

We have profoundly destabilized our communities. We have done everything that was wrong in social terms. We have uprooted people from the countrysides, we have shoved them into towns, we have not given them jobs, we have created ghettos and underclasses, we have increased crime and drug addiction and family breakdown, all of this in the period of maximum prosperity.

Why? Because we were only interested in economic indices. We forgot that the purpose of the economy is not just to improve the index, it is to improve prosperity along with social stability and social contentment, and GATT is typical of the economic instrument whose purpose is to increase corporate profits, whose purpose is to increase gross national activity, and whose result will be the destruction of the stability of our society, a continued breakdown in family life, a continued increase in crime, impoverishment, and all the other ills that we are now suffering.

Senator EXON. Sir James Goldsmith, I thank you very, very much. Mr. Chairman, I would hope—and congratulate you once again for having these hearings, because these are some of the concerns so adequately expressed by Sir James Goldsmith and others that you had before the committee that I am not sure the American people fully understand, and I think that the American people had better have a fuller understanding than they do now, hopefully before their representatives vote on this particular GATT agreement.

Thank you for being here.

The CHAIRMAN. Thank you, Senator. Senator Dorgan.

Senator DORGAN. Mr. Chairman, let me, Mr. Goldsmith, thank you for bringing a unique perspective to this debate. Your testimony before this committee on two occasions I think has been excellent, and adds immeasurably to the discussion and to the debate.

I would want to observe, just on this question of prosperity, to reinforce your notion of the use of indexes, the real question is how is prosperity shared. I was thinking as you were talking about that, in Haiti you will find some of the riches people you will find anywhere living up in the hills above Port-au-Prince. It is not that there is not any money in Haiti. There are some very wealthy people in Haiti, living up there, looking down over some of the most awful, terrible slums in the world.

So, the question is, How broadly is prosperity shared when you create enhancement and economic growth? In this country we are now facing a vote a couple of weeks from now about an economic policy that I dare say is, differing some with Senator Moynihan's assessment, not the most important in a decade, but perhaps the most important in the last quarter century, and yet it is being met by an enormous political yawn.

It is not that there are not 100,000 people marching on Pennsylvania Avenue, or that there are not 1,000 people. There is not one person that I am aware of today carrying a sign up Pennsylvania Avenue saying this is something that concerns me a great deal, this is moving in the wrong direction, this is wrong-headed trade policy, this is going to threaten our jobs, this is going to lower our income. It is being met with an enormous political yawn.

I know that is not the case in some areas of Europe. Can you describe to me what is the debate going on in Europe on this, and as an observer, why do you think it is met with such a yawn in this country?

And as you think about that, let me make one other point. The very areas where we ought to be able to have a stimulating debate in this country, the established press and elsewhere—and I might mention, for example, the Washington Post, the Los Angeles Times, the Washington Post, when we had the NAFTA debate, you could not get an op-ed piece anti-NAFTA. They ran 6 to 1 column inches pro versus anti. The same would be true on GATT.

I have not gone through to look at the column inches, but the fact is, the notion where you ought to have a free and open debate, you are sort of shut off, because there is two sides. There is the free-traders, the thinkers, the deep thinkers especially, and then there are the others who oppose it, and they are the isolationists, antibusiness, the xenophobic stooges, somehow.

And so those are the two positions. It is not a very thoughtful way to frame this debate, but that is unfortunately the way it is framed, so why do we not have the kind of stimulating debate, in your judgment, that we ought to have on this? Why does it not tickle the interests of those who are politically involved?

Sir GOLDSMITH. Senator, I think you had a debate, of course, on NAFTA. NAFTA is small, tiny, trivial. It was part of your regional policy, and if you like, within our European context, it is not unlike being in Portugal, parts of Italy, Greece, other countries which are also less developed, and it is within the context of, which brings in all the problems that occur between neighbors, but it was understandable. The average person could understand what a free trade area with Mexico or Canada meant. It was human in size.

GATT is worldwide. It is so big that people cannot grapple with it. It is just massive. It is the biggest single economic act we can take. So that is one reason.

Second, there is, as I mentioned before, a deep conflict of interest. Business wants it. Business has access to almost giveaway labor. This is the greatest change in the sharing of the value added between capital and labor that has ever occurred.

Every agreement that has been reached, as the chairman said, throughout history by strikes, lockouts, political battle as to how to share that value added, the difference between the raw material cost and the finished product cost, who does it go to, capital or labor? We worked it out in each of our communities in the way in which we could live. That is shattered. All of a sudden, it all goes to capital.

Now, I am a capitalist. I am talking against my financial benefit. I am no longer in business, but I can invest and get the full yield, but I think it is the stupidest thing I could do.

Now, what happened in Europe, nobody knew about it, just like here. Nobody knew about it. Now, I am in fact one-half English and one-half French, and I am a dual national. My mother was French, and I started in France the campaign about 14 or 15 months ago, I started writing in the newspapers, and I wrote a book, and then I was so—then the signature took place in December and in March

in Marrakesh, and the debate went away. It was as though it was all done.

So, we started a political party for the European elections so as to keep the debate going. I have no ambition, political ambitions of my own whatsoever. I just wanted to make certain the debate stayed out there, and we fought and we won, and today the majority of the French know about it, and are against GATT.

Now, in England, an old free-trading country, I have just gotten around to it, just published my book there, just started writing, and the debate has started, and it started very big, an enormous amount of comment. I was even very honored by being attacked in a seven-page document by the European Commission, who did a wonderful personal attack, for which I thanked them publicly.

The problem is getting the debate going. No one has an interest in getting the debate going. Industry does not have an interest. The elites who work with industry, the power structures do not, so you have this split of the power structures against the people. Now, that sounds demagogic, but that is the fact, and you have got to break through. That is what you are trying to do.

Senator DORGAN. Well, it is very hard to do, and often those who are opposed to something called free trade, which in itself is a very seductive title, are viewed as antibusiness. Oh, gee, if they are opposed to free trade, that means they are just a bunch of backward folks who do not understand. They just do not get it. They are not wise enough to understand the benefits.

And I wish we were not debating these terms, because the terms themselves are so—so nonrepresentative of what the subject matter is. This is not about free trade, in my judgment.

I want to ask you—I must leave, unfortunately, to go downtown to talk about interest rates briefly, but I want to ask you about child labor. We had a hearing in the Congress about child labor, and some estimate there are a couple of hundred million kids out there in the world working, many working under laws that provide no child labor protection, and so on, and this GATT has an article, article 20 under general exceptions allows a country to violate GATT rules in order to take action against products made by prison labor. Well, that is reasonable. We do not want socks being sold in American department stores coming from Chinese prisons. We have been through that debate.

But I ask the question, Is there anything in here that would give us the opportunity to take action against products that are made by 12-year-olds working 12 hours a day for 20 cents an hour, in working conditions that we would deplore, and the answer is "No, there is nothing in this agreement that gives us the opportunity to decide that is not the kind of product we will accept." Do you view that as a serious problem as well?

Sir GOLDSMITH. Senator, I think if you are going to have 120 countries in the GATT agreement, you are going to have every kind of product, and no one is going to be able to police that. This is a pure utopia. GATT, the global free trade is the replacement utopia for Marxism. It is another one of these mad utopias.

And as for free trade, I am entirely for free trade, within groups, within areas, where competition is possible without destroying the

community. I am entirely for working with the other areas. I am entirely for free markets.

I believe we can participate in helping them development themselves—and I know it is the time to get into it—and at the same time, have the benefits of competition, free markets, free trade in our own area. I am not against and I am not for—you know, you get labelled protectionist—I am not a protectionist; I am for free trade.

But I do want to protect something. I want to protect the stability of our society. I want to protect jobs. I want to protect stability of life in towns. For that sort of protection is the sort of protection we should go for. And that is how we can do it—by keeping—using the economy to service, as opposed to us serving the economy.

Senator DORGAN. It has astounded me that those of us who are concerned about protecting certain basic things in our society—a living wage and other things—are portrayed as doing a disservice somehow. There is nothing wrong with deciding that we are economic nationalists, we are interested in protecting things in our country. Under any conditions, I would agree with you: I do not want to close our borders. I want our consumers to have the widest access of products available at good prices.

But I also want people to understand that the things that we fought for over many decades in this country for the benefit of all the people in this country brings with it then, when you come to our country, certain obligations as you enter our marketplace.

And that is where we fall short.

Sir GOLDSMITH. That is exactly right.

Senator DORGAN. Enterprises believe that this is a marketplace that you move into and out of without any obligation at all. And I have obviously great disagreement with that.

Sir GOLDSMITH. If you give yourself the time before committing—blindfold effectively—to this massively important act, you can look at alternative measures, alternative economic structures, which will give you free trade within regions, give you competitive and free markets, and not destroy the stability of your community. Whereby we can prosper without committing suicide.

Senator DORGAN. Well, unfortunately, the fast-track procedure brings this to the Congress and says, no amendments whatsoever. You debate it. You vote. And that is it. And that, of course, is a travesty of the democratic process as well.

But, again, I incidentally have finished reading your book, which I think is called "Trapped." And I found it to be a wonderful discussion of this. And I suppose I found it interesting reading largely because I agreed with most of it. But I think it is a contribution to this debate, and would commend it to others as well.

Mr. Chairman, I unfortunately have to depart, but thank you very much for inviting Mr. Goldsmith.

The CHAIRMAN. Thank you very, very much, Senator.

Let me also, Sir James, thank you for "The Trap." I have read it. It is very, very interesting. Well, I will bring up that point. You talked a minute ago about GATT, and, to me, it highlights the mindset of knowing the cost of everything and the value of nothing. And you described in your book the GDP figures, the gross domes-

tic product figures, and how we really embellish those figures with disasters and everything else.

Will you put that in your testimony? Can you respond to that? I think that is very interesting, because it is a fact. And I think that we are not just talking feelings, we are talking about actual facts.

Sir GOLDSMITH. The point I make in there, Mr. Chairman, is that GNP or GDP is a measure of activity, economic activity. It is not a measure of good activity or bad activity, it is a measure of activity.

So, as we all know, if you have a hurricane or an earthquake, GNP goes up because you have got to repair the damage. If you have an epidemic, GNP goes up as you put up more hospitals and employ more hospital staff.

If you look at the three great tragedies of the day—cancer, drug abuse and crime—according to the best estimates I could find, they contribute 7.4 percent to the U.S. GNP.

So, I would merely warn—that is all I try and do in the book—that GNP is a useful measure of economic activity, but it is not a measure which is qualitative, and you can have growth in GNP while, at the same time, destroying your community.

The CHAIRMAN. I can tell you now so you will sort of understand, that it is a mantra. It is just an absolute belief. If you are going to be a U.S. Senator and you are supposed to be a leader, I can tell you they will not pay any attention to you if you do not say immediately you are for free trade.

I know from the experience if you run for President, the Trilateral Commission will immediately have you up to pledge on the altar of free trade, the Council on Foreign Affairs, and all the corporate leadership, and you have got to have their support and everything else like that to prevail—that is all they know, because that is all they understand—profit.

And I think the big misunderstanding then coming down to just us regular folks, you know, we equate it immediately, free trade with a free domestic market. We all believe in the free domestic market. Let competition ensue. But there is no such thing as a free international market whatever. And it is a hard thing to get them to understand.

One area that you could comment on because you know Europe. And you get the previous witness, Chicken Little, the sky would fall if GATT were rejected. And incidentally, I do not mind being called a protectionist—I will never forget when President Reagan was sworn in on his second term, we had inclement weather so we were in the Rotunda. He raised his hand to preserve, protect, and defend.

And that afternoon, we went down and had a little debate, and somebody got all mad about protectionism. We have got the FBI to protect you from crime, social security to protect you from the ravages of old age. You go right on down. Health care, Medicare, Medicaid, to protect you.

Antitrust laws to protect you from monopolies. Whatever it is. You can go right on down the list. That is the fundamental of government. But if we want to protect our economy like they do in Europe they criticize protectionism. Now, about 15 years ago, we had

a textile bill before Congress. And I realized at that particular time that Europe and the United States both had a deficit in the balance of textile trade of \$4 billion. Today Europe is less than \$1 billion. Today the United States has grown to a \$31 billion deficit in the balance of textile trade.

They enforce their laws. That is what I mean. They will say, well, OK. What does that mean to them? That means just that. They enforce their laws and business is well on top of the table, trade is trade. There is nothing wrong with that.

You do not have the rancor, say, in Europe, with the Japanese. They go along with your trade practices and rules; you go along with theirs. Everybody understands. It is a mature relationship. There is none of this moral question of cheating or crying: "Be fair, be fair. Level the playing field. Be fair." They just have a different philosophy in trade.

How is it in Europe you really maintain your protection, you enforce your laws, and do not have the rancor that we have? We have got to constantly go ahead and meet with the Japanese. And we both bow and scrape to each other and pledge that we are going to have a better understanding later next time. And then we get nothing on financial services. Nothing on workers' rights. Nothing on the environment. You can go right on down the list.

They rejected the President over in Naples. He is in Jakarta now. But they rejected him in Naples in June when he put out financial services there. They said "Let us go in the next room and we will have a drink. There is no use to talk about this one."

So, how is it in Europe you do not have the rancor which seemingly we have to suffer here in this country?

Sir GOLDSMITH. Well, Mr. Chairman, I do not think we have enough. Because the European Commission—and the European Commission is equivalent of—it should not be, by the way, but it is—it acts like a government—has the monopoly of initiative. And it is dominated by religious free traders. They consider it a religion.

There is no doubt that Germany believes in free trade, and the bulk of the establishment in Europe, economic, political and other, believes in free trade.

So, what I am saying—what I have said to you today would largely repulsive to the economic/political powers in Europe, but largely—I mean massively acceptable to the public who are the ones who are suffering from it.

So that, at the moment, that is not happening.

Japan, on the other hand, is the living example that you can export without having free trade. I mean we heard Felix Rohatyn say, what is going to happen? How can we benefit from this great new world which is opening?

I agree with that. We have got to benefit from it. But we do not have to destroy ourselves to benefit from it. Japan has not.

We can have a trading policy which suits each region. Trading should be on that basis. And which helps, because we can invest there. And we can have—you see, what big business does not make a sufficient difference in public about is the difference between investing in a country so as to conquer part of the marketplace in that country. That is one proposition.

And the other is investing in the country so as to reimport the goods cheaply into your home market. That is a quite different thing.

Now, if somebody wants to go and invest in China—and that is fine by me—so as to conquer the Chinese market, which is what you are being told about, so as to go out there and become a big player in the telecommunications business and the electrical—whatever market you like—and you build your factory there and you go there and conquer part of that market, good for you. That is good.

But if you are going to put a factory over there just to reimport the goods here because you have got cheaper labor, that is death.

The first if life; the second is death.

And this is the big difference. When you hear all this business about conquering markets, that is fine if you do not reimport the products back. If it is not just to get cheap labor.

But insofar as Europe is concerned, Europe has lost an infinite amount of factories to low-cost areas. And I know that if I had anything to do with it, we would have a regional free trade market. We would come to a bilateral agreement with you in the North American market. We would do deals which were suitable for both your market and ours, which did not destroy our jobs, which allowed your industries to come into Europe and sell their goods by manufacturing in Europe, and allowed our industry to come into the United States and build factories and employ people and invest in the United States.

And we would participate in each other's communities. We would try and compete actively, vigorously and try and take bigger market shares in each of our communities, but we would be employing. We would not be destroying.

The CHAIRMAN. Exactly. I referred just to textiles. But, not only that, automobiles. I will never forget. We had a hearing on that before this committee, and I looked, and it took 4 months if we delivered a Ford automobile on the dock in Tokyo to be inspected. You see they delivered 1,000 Toyotas in Portland, OR. We will inspect 10 in an hour's time in Portland. That will be a fleet inspection. They put them on flatbeds and come and sell them in South Carolina and Washington.

But it takes about 4 months in Tokyo. But then I learned that that is nothing, man. It takes 1 year to buy a 1994 Toyota in Le Havre in France. I mean they deliver them on the dock there and it takes them 1 year to inspect. And those are the types of nontariff barriers I was getting at.

The Europeans seem to know how to handle and at least hold the line some on these markets. If we had a similar kind of confrontation—call it that as you will, but trade is trade, business is business—I think they would better understand it and we would not have this \$31 billion deficit in automobiles alone with Japan.

Sir GOLDSMITH. The right way is to get the right structure.

The CHAIRMAN. Right.

Sir GOLDSMITH. And the right structure has to be done by those who are the leaders. And then everything will follow.

We do not want the wrong structure, which we get around. Like the example you gave in Le Havre, the right way is to try and

make it clear that the policy we are following now is wrong and destroying our society. And then play by the new rules, which would be rules which would be beneficial for us, as opposed to avoiding rules which are just thoroughly destructive and which people have to try and avoid.

The CHAIRMAN. Very good.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

And I will not detain you but just a moment, Sir James Goldsmith, for one last question to follow up on what is a major concern of mine that I expressed to you, and you gave very pointed answers to in your previous testimony.

Since that exchange, I have had a call from a very high administration official, a very good friend of mine, who tried to allay my fears on this matter of sovereignty. Everyone now seems to agree with the concerns that I have with the World Trade Organization, and the citation that I made, Bangladesh and the United States. I brought this up with Prof. Lawrence Tribe, and he said, "Well, Senator, it is even worse than one-man-one-vote."

Then he went into the explanation of how if the three-member commission appointed by the World Trade Organization decided against the United States and with Bangladesh, he pointed out that it would take 113 members, including Bangladesh's agreement, to override that. Which is another way of saying that nothing will ever be overridden.

The other side of that is, as explained to me, that while that might be true, from a practical standpoint that would never happen. And I said, why would that never happen with Bangladesh or some other smaller nation? I cite the example, would we be in the United Nations if we did not have veto as a superpower?

They said, "No, because Bangladesh could never, ever afford to give up their opportunity to sell in the United States." And therefore, they would not press such a case.

I suspect that there are some good things about the GATT agreement that I like. But I would like to have your impression, since we have had a whole series of situations where the smaller nations have got together and, under the one-man-one-vote principle, would have overridden the interest of the United States and Great Britain and some of the other real powers were they not facing the veto.

Explain if you can further whether or not you think my fears in this regard are correct and whether or not and how would you answer the explanation that is given—well, technically, you probably are right, but that simply would never happen because Bangladesh, in the example that I cite, would never dare to give up their rights to invade and take advantage of the tremendous marketplace in America.

Sir GOLDSMITH. Well, let me try and answer it, Senator, not in a legal way but a commonsense way. What can the World Trade Organization mean if it is not—if it is based on one-vote-one-nation, what can it mean other than one-vote-one-nation? Does it mean no one is committed or everybody is committed?

And in this particular case everybody is committed.

Now, once you have got it and you cannot get out of it, if you are going to rely on the fact that nobody is going to force you to do it, that is a pretty flimsy and bad agreement. If you do not want it to happen, write it in. Have an agreement which makes it explicit.

Why do they want to use code languages if that is what they are saying? They are saying no one is going to dare do it. Why not put it in the agreement?

I mean, as of the moment, the agreement is that we all dilute our sovereignty massively. We lose it on the basis of a voting group of between 108 and 130 people. I do not know exactly how many nations are going to sign up at the end.

And that is a fact. Once you have signed it, you are in it.

Now, if you are going to rely on the fact that nobody is going to use it, then why are you signing the document in the first place? Make it explicit.

Everything at the moment—at the moment there is a sort of panic going on. All of a sudden everything that is in the World Trade Agreement does not mean this, it means something else.

Eight months ago, 1 year ago, GATT, the World Bank, and the OECD produced a document saying that the financial benefits of GATT, when fully implemented, would be \$213 billion per year for the whole world. It sounded good. I read it. And I found that that was in 10 years. I then found it was perhaps. And I then found that was equal to 0.7 percent of the perspective world GNP at that time.

And the three of them did it. Then they confirmed it a few months ago. And now they see that there is just a bit of a battle against them. Every day they panic. It becomes \$500 billion overnight. They went from \$213 to \$500 billion. And now it is \$120 billion for the United States alone in 6 months.

Do not believe any of that stuff. [Laughter.]

Senator EXON. Refine this just a little bit further so I understand it, for the edification of myself and other members of the committee and hopefully the Senate as a whole. Going back to that situation that I alluded to, for example, Bangladesh and the United States, supposing the United States said, "That is very unfair. The World Trade Organization has been very unfair to us. We cannot get this overturned, obviously, with 113 nations in a unanimous vote, including Bangladesh, who brought the action in the first place."

Would the United States, in that kind of a scenario, be faced with saying, "OK, we are going to withdraw from our obligations under GATT as far as Bangladesh is concerned, and we are not going to trade with them, and we are not going to accept any of their goods?" Could we do that and still maintain our relations in GATT with, let us say, the nations of Europe, including Great Britain?

Sir GOLDSMITH. I would prefer Professor Tribe to answer it. I have seen his opinion. And it is clear to me that you cannot get out of it. And once we are in, we are in. And therefore, I would suggest that it not be hurried. The idea that it has to be done by a certain date, when for 8 years it has been going on—why not study and see what is in there?

Every day you find surprises in that bill. All sorts of things you did not expect to find you are finding. It is not my concern; those are American concerns. But I would read them. Find out. How can anybody sign this bill without understanding fully whether you can get out of it? Without understanding fully how much sovereignty you are giving up? Without understanding fully what is in the bill? Whether it concerns only trade issues or wholly extraneous issues?

How can anybody, any responsible person—and I now count myself not as a responsible person but as a politician, because I am going to have to vote on this on the 14th—I can tell you how I am going to vote. My point that I will be making in the European Parliament is not 5 percent of the members of that parliament know what is in the bill, and they are going to sign it.

Now, how can we sign something which is the most important piece of economic legislation in our lifetimes—and even those in favor of it say, as I mentioned before to Senator Moynihan how important it is—how can we sign it and act responsibly without knowing the answer to all the questions you are asking? And not 5 percent do.

Senator EXON. From your understanding, and you have obviously studied this a great deal, from your understanding, could the United States and would the United States, under GATT as presently written, be able to withdraw from any relations with Bangladesh, in my example, and still maintain their place in GATT with all the other 112 signatories?

Sir GOLDSMITH. In my view, no. Unless there has been an infringement of some kind by Bangladesh, in my view, no.

And the question will be: Can you get out? Because that is going to happen. Because countries are going to want to get out. They are going to have so many social problems, when unemployment grows to the level that will be intolerable to society, where the fundamental conditions which sustain democracy will be in jeopardy, they will have to get out. And then we are going to see a whole new ball game.

How is it going to work?

I do not know. That has not been discussed. It is for life.

Senator EXON. Thank you, Mr. Goldsmith.

Thank you, Mr. Chairman.

The CHAIRMAN. Sir James, Lori Wallach, our lawyer from Public Citizen, could answer it accurately. But practically, you cannot get out and you do not want to get out. We have a dickens of a time here changing the mindset. After all, we think we are leading when we are losing. We think it is from productivity is the reason we lose these jobs or technology, when we know it is the technology used abroad—the productivity abroad due to cheap labor.

And being a leader, you would be emburdened then, sort of morally, to go along with WTO, at least for a few years. They will say, "Not just next year or the following year, but in 5 to 10 years, try to support this wonderful World Trade Organization." Because the United Kingdom, France, and the United States would be a minority of 2½ out of the 117 to 123 nations, and within a 5- to 10-year period, we would have gone down the tubes economically.

It is a tragedy, Sir James, that we are having to do this when we are out of session. I could guarantee you if we were in regular

session, the Senators would be leaving all of those other committees, and we would have more Senators than we have in the audience. But they are all back home after the election and otherwise.

I hope the record being made here can be studied, because you have really done us a tremendous favor, and made a magnificent contribution to the discussion and debate and the awareness of the real dilemma we have. Yes, it is the deficit problem. Yes, you can see all of these other domestic problems with respect to homelessness, crime, and everything else. But the No. 1 issue on top of the table here in America should be a competitive trade policy. Because we have got to hold on to what we have got left.

That third leg I have described, of the economy, has got to be rebuilt. We are not rebuilding it in this country. You have certainly been a tremendous value to helping us to rebuild it. I cannot thank you enough.

The committee will be discharged of the GATT implementing legislation on November 22, and this will be our final hearing. I thank everybody for their attendance.

Thank you very, very much, Sir James.

Sir GOLDSMITH. Thank you, Mr. Chairman.

Thank you, Senators.

The CHAIRMAN. The hearing is adjourned.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR DOLE

I appreciate your holding hearings on the Uruguay Round implementing legislation. This is a crucial issue for the United States that will have a permanent effect on U.S. competitiveness. This is why it is essential that we exercise our right to examine the agreement, and the legislation proposed by the administration to implement it, and that in the future we fulfill our obligation to closely monitor the impact of the agreement.

It seems to me that the overriding consideration ought to be whether the United States, by entering into this trade agreement, is needlessly relinquishing powerful leverage as the world's only economic superpower. If the answer is that implementing the agreement today is a net plus for the United States, what about future development? Should we nevertheless have a contingency plan if the day arrives where we find that our laws and administrative practices are frequently being reversed by the World Trade Organization? Should we also consider what number of losses in cases before the WTO should trigger concern here in Congress, and what criteria Members of Congress should use in evaluating our continued membership in the WTO, if the number of losses is high?

Furthermore, since we are entering uncharted waters with this agreement, are there other aspects of our domestic decisionmaking that could eventually be subject to similar international oversight and control? This is an issue that should command some of our attention.

Finally, the question of our future involvement in trade agreements, and the authority the Congress grants to the President to enter into such agreements, is highly significant. Our recent experience with this implementing bill, in which many items of profound disagreement were included, does not augur well for a return to the familiar processes of the past.

I hope these questions are helpful as you conduct what in my view are an important series of hearings.

LETTER FROM NANCY LEAMOND, ASSISTANT UNITED STATES TRADE REPRESENTATIVE

OCTOBER 24, 1994.

Senator HOLLINGS,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR: While you are considering the GATT implementing legislation, enclosed please find copies of letters and statements of support for the GATT. These letters have been submitted by consumer, business, manufacturing, policy, and agricultural organizations and associations from throughout the country.

These letters and statements have been sent to Members of Congress, the administration, and the United States Trade Representative. They have also appeared as general news releases and in such publications as the New York Times.

Sincerely,

NANCY LEAMOND,
Assistant United States Trade Representative.

[The referred to letters and statements may be found in the committee files.]

JOINT PREPARED STATEMENT OF PROF. JOHN P. GOULD, DISTINGUISHED SERVICE PROFESSOR OF ECONOMICS, UNIVERSITY OF CHICAGO SCHOOL OF BUSINESS AND DR. GUSTAVO E. BAMBERGER, VICE PRESIDENT AND SENIOR ECONOMIST, LEXECON, INC.

I. INTRODUCTION

We have been asked by counsel for American Personal Communications ("APC") to comment on the proposal contained in the GATT legislation to charge the three broadband Personal Communications Services ("PCS") pioneers—APC, Cox Enterprises, and Omnipoint Corporation—for their PCS licenses. We also have been asked to comment on the criticisms of the GATT proposal that have been made by Pacific Telesis ("PacTel").

Based upon our review of economic principles and the history of the PCS industry and the pioneer preference program, we conclude that:

1) It is undesirable as a matter of economic policy to increase the uncertainty faced by businesses, especially in rapidly developing high technology areas like telecommunications. Thus, we believe that changing the "rules of the game" by charging the pioneers for their licenses is bad public policy.

2) PacTel's criticism of the GATT proposal is based on economic analyses that contain basic and fundamental errors. Its criticism should be disregarded.

II. CHANGING THE TERMS OF THE PIONEER PROGRAM RETROACTIVELY IS BAD PUBLIC POLICY

In deciding to require the PCS pioneers to pay auction-based prices for their licenses, the FCC has changed the "rules of the game." We believe that this type of unpredictable public policy change likely will have negative long-term economic consequences. The FCC offered PCS licenses to successful "pioneers" as a means of "encourag[ing] the development of new services and new technologies."¹ The pioneer's preference program was intended "to encourage entrepreneurs and venture capitalists to invest time and money in new services and any related technologies."²

In response to the pioneer program, nearly one hundred private businesses and entrepreneurs invested millions of dollars in high-risk projects to develop innovative services and technologies. This investment program has provided, and will continue to provide, substantial benefits to the public. After the investments were made, the FCC changed the rules by requiring the successful pioneers to pay auction-based prices for the pioneer licenses. It is important to remember that when the pioneer program was instituted, spectrum licenses were not auctioned. Thus, a firm that did not receive a license (without having to pay for it in the initial distribution) would have to pay a market price for a license in the resale market—the guarantee of a license was therefore a reward equal to the market value of a license because pioneer recipients would pay zero instead of the market price for the license.

If the government breaks its promise to the PCS pioneers, it likely will be perceived as more likely to break its promises again. As a result, it will be more difficult for the government to induce entrepreneurs to make investments in the future. The negative economic consequences of the government's actions toward the pioneers could be particularly significant because we understand that PCS is likely to be a key component of the rapidly developing family of information technologies known collectively as the "information highway." The "information highway" is expected to have substantial effects on the domestic and global economy. From the viewpoint of businesses and entrepreneurs, however, the development of new information technologies is fraught with uncertainty, including uncertainty over government policy in areas such as regulation, competition, research and development, intellectual property rights, joint ventures, and technology transfer. It is desirable for government to reduce the uncertainty as much as possible by following a consistent policy and it certainly is desirable to avoid tactics that will discourage investors from believing the government's promises. The FCC's reversal of position, after it has been relied upon by business planners, is the antithesis of the consistency that is needed to encourage rapid economic development in the information technology area.

The importance of consistent government policies is well recognized. For example, PacTel's economic expert, Professor Jerry Hausman, discusses this issue in testimony he filed on behalf of PacTel in a proceeding before the California Public Utilities Commission. In that proceeding, which involved the spinoff of PacTel's cellular businesses, Professor Hausman testified about the dangers of allowing regulators to "back-track on a decade of regulations." Professor Hausman also testified that

¹ Pioneer Rulemaking, 6 FCC Rcd at 3490, ¶18, 3492, ¶32.

² Pioneer NPRM 5 FCC Rcd at 2766-67, ¶5.

"sound public policy requires that there be at some point finality" to a regulator's decisions.³

Information technology is an area where uncertainty is inherently large because it is such a new area of technology and engineering development. Moreover, such uncertainty can be a major concern because the business application of this technology involves a substantial amount of up-front investment of time and financial resources before a product can be brought to market. The development of PCS provides a good example of the kind of unknowns that can be involved. At the time this technology was being considered, many observers felt that the commercial potential was negligible or non-existent. Thus, a commitment to the development of this technology required both vision and a willingness to undertake substantial risk. Now that the value of the technology has been established through the work of the pioneer preference participants, there is a "twenty-twenty" hindsight response from some competitors and some policy groups to limit the return on that vision, risk-taking and commitment. But there is an inherent asymmetry in this "twenty-twenty" hindsight approach because it is unlikely that those arguing that the pioneer preference winners should have their rewards eliminated or substantially curtailed would have argued that the pioneer preference participants should have their losses paid for by the Treasury or other public agency had the effort to develop PCS failed.

In short, the pioneer's preference program is part of a broader set of issues in which consistency and integrity of public policy will be very important. A government policy that remains consistent in its promises, objectives, and actions is of great value, and the temptation to change course or "retro-fit" policy on an ad hoc, case-by-case basis should be avoided.⁴

III. PACTEL'S ANALYSIS CONTAINS BASIC AND FUNDAMENTAL ERRORS

PacTel agrees that the pioneers should receive broadband PCS licenses. In recent testimony before a House subcommittee, a PacTel representative stated that "[w]e are absolutely not interested in taking away the license that was granted to OmniPoint or anybody else."⁵ PacTel also agrees that the pioneers should receive their licenses at a discounted price. At the same House hearing, the PacTel representative testified that "if we believed that the licenses were going to be offered at 90 percent or at 85 percent or anywhere in that area of the fair market value, we wouldn't be here today. We wouldn't have raised the issue."⁶ Furthermore, the PacTel representative testified that PacTel supported the FCC formula (a 10 percent discount) and that PacTel had suggested a 30 percent discount in its discussions with the administration.⁷

PacTel's only objection to the discount in the GATT legislation is to its size, which they have variously characterized as a 73 percent discount and as a "\$1 billion giveaway." The two analyses that PacTel has put forth are inconsistent and contradictory, and both contain basic and fundamental errors. Furthermore, PacTel's analyses do not take into account that the FCC proposal is under judicial review. We understand that if the FCC proposal is rejected by the courts and the GATT proposal is not accepted, the pioneers will receive their licenses at no charge. Similarly, we understand that even if the FCC formula is upheld, the Treasury would not receive any payments until all judicial review is concluded, which could easily take two or more years.

The first PacTel analysis is presented on a one-page document entitled "GATT Proposal for Pioneer Preference License Costs." It purports to show that under the GATT proposal, the government would receive only 27 percent of the value of the three licenses (i.e., a 73 percent discount). The second PacTel analysis is contained in a two-page paper by Professor Hausman. Professor Hausman concludes that the GATT proposal results in an approximately \$1 billion discount to the pioneers. The two estimates are based on inconsistent and contradictory assumptions. For example, Professor Hausman estimates that the value per pop of the New York MTA is \$52.32. The other estimate is based on an analysis that assumes that the value per

³Testimony of Dr. Jerry A. Hausman, Order Instituting Investigation, 93-02-028, June 15, 1993, p. 12.

⁴Although the GATT provisions also would reduce the pioneer's preference awards substantially, we understand that the three pioneers support those provisions because it gives them a clear and timely answer to the uncertainty that currently surrounds this issue and allows them to move forward in the business of providing PCS to the public.

⁵Transcript of October 5, 1994 Hearing before the House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, and the Subcommittee on Telecommunications and Finance, p. 104, lines 2417-2419.

⁶Transcript of Hearing, p. 103, lines 2394-2398.

⁷Transcript of Hearing, p. 102, lines 2358-2362 and p. 105, lines 2455-2457.

pop of the New York MTA is \$89.67—71 percent higher than Professor Hausman's estimate.

The PacTel analysis leading to the 73 percent discount figure contains two basic errors. First, PacTel's analysis of the GATT proposal is based on an unsupported and extreme assumption that predetermines their result. The PacTel analysis is based on the explicit assumption that the per pop values of MTA licenses are exactly proportional only to the number of people in the MTA and are differentially affected by no other variables or economic influences. Thus, PacTel assumes that the New York and Los Angeles MTAs will be by far the most valuable MTAs on a per pop basis solely because they are by far the largest MTAs.

Stating this point differently, PacTel is claiming that the "per pop" value of a license is proportional to the square of the number of people in that market. For example, because the New York MTA has 5.8 times as many people as the Milwaukee MTA (the 20th largest, based on 1990 population), PacTel assumes that the per pop value of the New York MTA is 5.8 times larger than the Milwaukee MTA (\$89.67 per pop vs. \$15.42 per pop) and the value of the New York MTA's license is $5.8^2 = 33.64$ times more valuable than the value of the Milwaukee MTA license. That is, PacTel assumes that even though the New York MTA has only 5.8 times as many people as the Milwaukee MTA, the New York MTA license is almost 34 times more valuable. Similarly, PacTel's methodology implies that the New York MTA license is 697 times more valuable than an MTA with a population of 1,000,000. PacTel's assumption implies that if two contiguous areas with the same population were combined into one area, the total value of a license for the combined area would be four times larger than the value of a license for one of the original areas. We regard that implication as highly improbable if not outright absurd. It is precisely this kind of excessive overvaluing of population that underlies PacTel's claim that the GATT proposal would give the pioneer preference winners a 73 percent discount. In fact, PacTel's calculation of a 73 percent discount is due entirely to its extreme assumption about the relation of per pop value and population, not the specific numerical per pop value assumed for any MTA.

The second error in PacTel's "27 percent" analysis is that it mischaracterizes the FCC proposal's payment formula. The FCC order states that the pioneers should pay the lower of 90 percent of the value of the auctioned license in the same MTA or the average of the top ten MTAs. What PacTel has presented is the higher of the two.

Professor Hausman's estimate of a "\$1 billion discount" is the answer to the wrong question. As we explained earlier, PacTel agrees that the pioneers should receive a discount and supports the FCC formula. Thus the relevant comparison is between the FCC formula and the GAU formula. But Professor Hausman does not estimate the difference between the FCC and GATT proposals—he estimates the difference between the GATT proposal and no discount. Even if Professor Hausman's per pop valuations are accepted, his analysis implies only about a 15 percent difference between the FCC and GATT proposals. See Table 1.

However, Professor Hausman's analysis is based on an analysis of cellular MSA licenses, not PCS MTA licenses. For example, he assumes that the average per pop auction value for PCS licenses will be \$40, "which is based in part on current stock values of cellular companies, current stock market values of ESMR companies such as Nextel, and the experience to date of PCS in the United Kingdom." Professor Hausman does not explain how he derived this estimate. However, valuations based on the stock values of cellular companies may not be an appropriate basis for valuing PCS licenses. For example, the stock values of cellular companies reflect the values of ongoing businesses including substantial physical facilities and other assets such as goodwill and an established customer base, not merely the values of licenses to use the spectrum. We do not know how, or whether, Professor Hausman took account of these differences between cellular and PCS licenses in deriving his estimate.

EMCI, an independent consulting firm, has prepared estimates of PCS MTA licenses which it sells to interested parties. EMCI's estimates are substantially different from those put forth by PacTel. For example, while PacTel estimates that the per pop value of the New York MTA is either \$89.67 or \$52.32, EMCI estimates that the per pop value of the New York MTA is \$21.66. Using the EMCI per pop valuation estimates, the pioneers will pay about 77 percent of the estimated value of the New York, Los Angeles, and Washington/Baltimore MTA licenses under the GATT proposal—far more than the 27 percent claimed by PacTel and more than the 70 percent that PacTel testified it proposed to the administration. Furthermore, if

the EMCI estimates are used, the difference between the FCC and GATT proposals is only about \$22 million or two percent.⁸ See Table 2.

Table 1—Comparison of FCC and GATT Proposals, Using Professor Hausman's per Pop Valuations

	GATT proposal	FCC proposal
Average per Pop Value of Top 23 MTAs, Excluding NY, LA, and Wash/Balt	\$40.00	.....
Average per Pop Value of Top 10 MTAs, Including NY, LA, and Wash/Balt .....	.....	(0.3x\$52.32 +0.7x\$40.00) =\$43.69
Discount	x0.85	x0.90
Discounted Price	=\$34.00	=\$39.33
1990 Population of NY, LA, and Wash/Balt. (in millions)	x53.27	x53.27
Total Amount Collected from Pioneer (in millions)	=\$1,811.2	=\$2,095.1
Percentage Difference	=13.6% (1,811.2/2,095.1)	.....

Note: For the purpose of this analysis, we assume that the per pop valuations of the New York, Los Angeles and Washington/Baltimore MTAs are \$52.32 and the per pop valuations of the other MTAs in the top 23 equal \$40.00.

Table 2—Comparison of FCC and GATT Proposals, Using EMCI's per Pop Valuations

	GATT proposal	FCC proposal	
		LA and Wash/ Balt.	New York
Average per Pop Value of Top 23 MTAs, Excluding NY, LA, and Wash/ Balt	\$25.42	.....	.....
Average per Pop Value of Top 10 MTAs, Including NY, LA, and Wash/ Balt .....	.....	\$27.24	.....
Per Pop Value of NY .....	.....	.....	\$21.66
Discount	x0.85	x0.90	x0.90
Discounted Price	=\$21.61	=\$24.52	=\$19.49
1990 Population (in millions)	x53.27	x26.87	x26.40
Total Amount Collected from Pioneer (in millions)	=\$1,151.2	=\$658.9	+\$514.5
Percentage Difference	=1.9% (1,151.2/ 1,173.4)	=\$1,173.4	.....

Source: EMCI, Inc.

Comparison of Auction, H.R. 4700, FCC, and GATT Proposals Based on EMCI, Inc. Estimates

	Revenues (mil- lions)	As percent of auction	Percent discount
Auction	\$1,491	100	.....
H.R. 4700	1,342	90	10
FCC	1,173	79	21
GATT	1,151	77	23

LETTER FROM PETER NIGHSWANDER, CONSULTANT, MTA-EMCI

NOVEMBER 9, 1994.

ANNE PHILLIPS,
American Personal Communications,
Washington, DC 20036

DEAR ANNE: I am pleased to provide you with a listing of the top 30 MTAs ranked in order of population with associated per pop values. As you know, MTA-EMCI has

⁸ Bruce Fein also has criticized the GATT proposal. There is no economic basis for the numerical estimates Mr. Fein presents. In a footnote he suggests comparing the values of the PCS licenses on a per pop basis to the per pop values of some recently sold cellular businesses. This is a clear economic error because, as we have explained, the value of a cellular business includes much more than the value of a license to use the spectrum. Furthermore, he makes no attempt to justify or even explain the per pop values he uses in his appendix.

over 30 years of experience providing financial valuations, due diligence, financial planning, economic and market analysis to wireless and cable TV companies. We have also provided financial valuations and demand forecasts of PCS markets for potential bidders. I have attached the requested calculations for the FCC pioneer's preference and UATT payment proposals. In addition, I am including a description of our PCS demand methodology and our underlying assumptions.

PCS PENETRATION

Market assumptions used in the model are derived from extensive primary market analysis and research conducted by EMCI, Inc. Research conducted on the wireless and PCS market included:

- Telephone surveys of 4,000 households concerning the usage, buying behavior, and demographics of cellular and paging users, and interest in PCS services.
- Econometric modeling of cellular subscriber penetration by market
- Interviews and surveys of cellular, paging, and SMR carriers as to market conditions and future strategic plans

Market assumptions regarding cellular penetration growth rates are derived using econometric modeling based on actual operating results at the cellular market, carrier, and national level. EMCI collects operating results for cellular markets and correlates the data with demographic and economic statistics. Forecasts are then made at the market level for each cellular market.

PCS penetration is derived by using the cellular market penetration forecasts that correspond to the particular county at the PCS market level and adding an expansion factor that takes into account the expanding market driven by additional PCS competitors. The end result is total penetration for the mobile telephony market for the PCS market. The market share of PCS relative to the entire mobile market is calculated based on a growth curve starting at 2 percent in the early years and growing to 32 percent at maturity. Penetration rates for an individual PCS licensee take into account that only the three 30 MHz PCS licensees will build separate systems offering mobility service. The 10 MHz PCS licensees will either combine their systems with the 30 MHz PCS licensees, or with cellular systems already operating in the market.

PCS demand within a market is calculated at the census tract level based on the following four usage components:

- around place of residence
- around place of business usage
- around retail area usage
- vehicular traffic-based usage

Usage factors were based on a combination of actual characteristics in the cellular industry today and projected usage characteristics of PCS. Census tract level PCS demand were then used to design and engineer the final cell site configuration and voice channel design.

DEMAND AND REVENUE PROJECTION METHODOLOGY

• Demand is assumed to be primarily mobile voice demand with a small percentage of mobile data usage. Other services and usage patterns, such as alternative local loop, would increase assumed demand and total revenues, although operating margins may be reduced and capital costs may be higher.

• Monthly bill is assumed to begin at approximately \$40.00 per subscriber per month, and to increase over time to approximately \$50.00 per subscriber per month. Current cellular monthly bills average \$59. Mobile messaging revenue is projected at \$7.50 per month per mobile messaging subscriber.

• Market share of subscribers is assumed to be divided equally at 33 percent market share between the three 30 MHz license blocks. The three 10 MHz PCS license blocks are assumed not to be operating as a stand-alone entity, but in conjunction with a cellular or PCS carrier in a market.

• Roaming pricing is not assumed to be different from home use pricing. This is based on the likely competition from regional and likely nationwide PCS and cellular providers that will provide region and nationwide service without significant differentiation by location of use.

• This model is based on the assumption that all PCS licenses become operational. To the extent that licenses are not built, due to legal problems, regulatory constraints, or viability, the remaining licenses will have increased market share and value.

NETWORK DESIGN AND CAPITAL COSTS PROJECTION METHODOLOGY

- TDMA (half rate) technology is used to calculate network design and infrastructure costs. The use of other technology may reduce infrastructure costs.
- Cell site designs are based on macro-cell configuration as defined by 2 GHz propagation characteristics and FCC power limitations. Cell designs are segmented by dense urban, urban, suburban, and rural/highway. Coverage areas are determined based on models of radio propagation for theoretical estimates of site radius.
- System design are for stand-alone operation and capital costs include costs for a dedicated switch and interconnection.
- Likely microwave relocation costs specific to each cluster are used and are derived from calculations by the engineering firm of Moffet, Larson, and Johnson, Inc. (MLJ), based on existing microwave users within the target cluster markets.
- T1 and access fees are derived from MLJ and based on projected system use and projected interconnection costs.

FINANCIAL ANALYSIS ASSUMPTIONS

- A ten year forecast is used.
- Initial switching and interconnection capital expenses are accounted for in year one for the clusters, with subsequent expenses incurred on an as needed basis.
- Cell site expenses are allocated 40 percent in year one, 20 percent in year three, 20 percent year five, and 20 percent in year seven.
- The cost to relocate microwave users is allocated to year three of operations, based on FCC rules concerning time-frames of microwave users to relocate their service.
- A terminal value is included to account for the value of the business at the end of the forecast period. In our original base case, we used an 8 times multiple of operating cash flow, but we have since adjusted that number to 10 to account for the significant growth expected from PCS after year 10 from sources such as local loop by-pass service.
- Operational expenses, in most cases, are adjusted cost functions of cellular operations.

As mentioned before, these values are based on a discounted cash flow analysis and do not reflect a formal fair market valuation of these markets. In addition, alternative operating and site construction scenarios are possible which could yield different values than these presented here.

Please let me know if you need additional information.

Best regards,

PETER NIGHSWANDER,
Consultant.

PCS MTA Ranking

MTA		1990 population (millions)	Per pop value (using 1996 pops)
1	New York	26.40	\$21.66
2	Los Angeles-San Diego	19.10	35.68
3	Chicago	12.06	28.81
4	San Francisco	11.89	32.78
5	Detroit	10.00	23.83
6	Charlotte	9.75	24.24
7	Dallas	9.69	26.36
8	Boston-Providence	9.45	23.75
9	Philadelphia	8.93	24.75
10	Washington-Baltimore	7.77	30.56
11	Atlanta	6.94	31.81
12	Minneapolis	5.98	20.53
13	Tampa	5.41	39.98
14	Houston	5.19	29.14
15	Miami	5.13	45.84
16	Cleveland	4.95	22.07
17	New Orleans	4.92	18.63
18	Cincinnati	4.72	18.57
19	St. Louis	4.66	18.61
20	Milwaukee	4.54	21.58
21	Pittsburgh	4.10	9.50
22	Denver	3.38	23.09

PCS MTA Ranking—Continued

MTA		1990 population (millions)	Per pop value (using 1996 pops)
23	Richmond	3.84	24.59
24	Seattle	3.80	34.12
25	Louisville/Lexington	3.56	18.17
26	Memphis	3.47	16.42
27	Phoenix	3.43	31.88
28	Birmingham	3.24	17.12
29	San Antonio	2.98	29.89
30	Kansas City	2.91	13.10

Source: EMCI, Inc.

PREPARED STATEMENT OF THE DAIRY TRADE COALITION

Mr. Chairman, members of this committee, this testimony is submitted on behalf of the Dairy Trade Coalition ("DTC"). The DTC was formed in June 1992 by National Milk Producers Federation, Farmers Union Milk Marketing Cooperative, Women Involved in Farm Economics, and Trugman-Nash, Inc.

The purpose of the DTC is to gather, analyze, and act upon any dairy trade related issues that members of the coalition may deem pertinent. A trade issue of great concern to the DTC is the General Agreement on Tariffs and Trade ("GATT") because of its enormous implications for the dairy industry and dairy policy.

It is hoped that DTC testimony will stimulate discussion between those to be impacted by the agreement and Members of Congress, administration officials, and dairy industry representatives about the GATT's effects on future congressional prerogatives and many existing policies.

At a time when even the most efficient and well-managed U.S. dairy farms are struggling, it is particularly disturbing that the GATT will reward foreign countries that most encourage monopolistic, anticompetitive trading practices with the right to export significant additional quantities of dairy products to the United States. As we explain below, American dairy interests are very concerned that government-sanctioned cartels or manufacturers are being used for illegal transfer pricing schemes and other significant violations of U.S. laws.

A case in point is New Zealand and the New Zealand Dairy Board ("NZDB"). The NZDB is a statutory export monopoly which exports New Zealand dairy products to the United States through its wholly owned subsidiary, Western Dairy Products, Inc. ("Western"), of Petaluma, CA. Since New Zealand produces far more dairy products than its relatively small population can possibly consume, the NZDB operates an entrenched, totally export-oriented global trading network designed to move dairy products out of New Zealand in huge quantities.

The Uruguay Round of the GATT will reward the NZDB with huge quota increases (5,100 metric tons) in commodity type cheese; specifically, Cheddar. This new allocation is in addition to the large quotas already available to New Zealand. Even more startling, this new allocation is in spite of the monopolistic, anticompetitive trading practices used by the NZDB to advantage its own dairy producers and manufacturers at the expense of those in the United States.

We believe these trading practices also help the NZDB to avoid U.S. taxes. By approving the GATT, the United States will agree to Grant to New Zealand this substantial increase in access for its cheese despite the monopolistic, anticompetitive trading practices of the NZDB that have been publicly cited by the U.S. Department of Agriculture ("USDA"). (See attachment 1 in the committee files.)

The huge quota increase granted to New Zealand under the GATT will contribute to driving down the U.S. price of Cheddar cheese, the prime mover of manufacturing milk prices paid to American dairy farmers. This enhances the ability of the NZDB to "play the market" to the disadvantage of American dairy farmers, trading companies, and processors. Incredibly, U.S. negotiators granted New Zealand this greatly increased access without addressing the NZDB's monopolistic, anticompetitive trading practices or assessing its affect on domestic producers.

In return for this "GATT giveaway," New Zealand will lower tariff duties on U.S. imports of dog and cat food and certain washing machines, as indicated in the Uruguay Round Sideletters and Memorandum of Understanding (see attachment 2 in the committee files.) The NZDB will also be allowed to continue undeterred in its anticompetitive trading practices. The facts concerning the NZDB are simple and are outlined below:

- *NZDB is a monopoly*—USDA has recognized the NZDB as “a statutory export monopoly [which] has the advantage of sole sourcing (and pricing) rights for New Zealand dairy products destined for export markets,” including the United States. (See attachment 1 in the committee files.)

- *NZDB extends monopoly into the United States*—New Zealand dairy products are imported into the United States exclusively through its captive importer Western Dairy Products, Inc. This practice allows the NZDB to extend its monopoly control over the price and availability of New Zealand dairy products to U.S. trading companies and manufacturers.

New Zealand has created a vertical cartel with enormous market power that controls the production, manufacture, export, import, and sale of its cheese. Moreover, not satisfied with this power, New Zealand has recently proposed that the USDA gradually eliminate American historical licensees. The also suggested to USDA that suppliers like the NZDB be granted authority to help run the U.S. import system.

- *NZDB problem not addressed by GATT*—As USDA observed, “While the Uruguay/GATT Round bypassed the issue of marketing boards and State trading companies, the NZDB remains an unreformed and anticompetitive entity.” (See attachment 1 in the committee files.)

- *NZDB violates U.S. antitrust laws*—Contrary to U.S. antitrust laws, all New Zealand dairy product exports (and the U.S. imports of these products) are controlled by the NZDB. This cartel prevents American trading companies from purchasing dairy products directly from New Zealand manufacturers and exporters. Instead, the NZDB’s practices force American consumers, manufacturers, and trading companies to pay noncompetitive prices for New Zealand dairy products.

- *NZDB under investigation by IRS*—The Internal Revenue Service is conducting an investigation to determine whether the NZDB avoids paying U.S. income taxes through improper intercompany transfer pricing schemes. (See attachment 3 in the committee files.)

This last point is particularly noteworthy because the NZDB avoids U.S. taxation by manipulating prices charged to its captive U.S. subsidiary. The NZDB is an export cartel that establishes the prices it charges for dairy products to its subsidiaries worldwide at varying levels, depending on local market conditions.

Through such “transfer pricing” schemes, the NZDB avoids recognizing, or paying taxes on, any significant profits in host countries, including the United States. As a result, taxes on any profits earned from New Zealand dairy product exports are recognized in New Zealand, to the detriment of U.S. taxpayers. This intercompany transfer pricing abuse has been criticized by other trading companies in other countries that import New Zealand dairy products. (See attachment 4 in the committee files.)

The greatly increased market access granted to New Zealand for cheese and noncheese dairy products will enhance the ability of the NZDB to influence domestic dairy prices and supply through its U.S. subsidiary by denying availability to customers when markets are low and by pricing its merchandise in the United States in an unfair manner. Hence, American dairy producers will face a dairy product market flooded with market depressing commodity-type cheeses. American manufacturers and trading companies with licenses for the import of New Zealand dairy products will face cutthroat competition from a well-funded, government-sanctioned, foreign export cartel.

Given the predatory practices of other governments such as that of New Zealand, adjustments to the current cheese importing regulations are necessary to ensure equity as the import market adjusts to the GATT. Briefly, the necessary regulatory improvements include:

1. Providing equitable treatment for import licensees consistent with the protections afforded to foreign cheese exporting countries under the agreement.
2. Strengthening of the regulatory prohibitions of discriminatory practices against import licensees by an exporting country.
3. Establishing protections for import licensees against predatory practices of anticompetitive entities.
4. The establishment of a licensee-funded import licensing system for noncheese dairy products.
5. A study to be conducted by the Secretary of Agriculture to determine the impact of different varieties of cheese granted access to the U.S. market under the agreement.

In sum, the cheese importing regulations must be strengthened as described in more detail in the DTC’s letter of August 1, 1994, outlining its recommendations in this regard to USDA. (See attachment 5 in the committee files.)

In addition to these necessary regulatory improvements, the GATT agreement raises a number of other troubling issues for the U.S. dairy industry. Three of the most important include:

1. A March 1994 USDA FAS publication, "Dairy: World Markets and Trade," states that the question of monopolistic dairy boards like the New Zealand Dairy Board was not taken up at GATT.

Why not? If the trade distorting practices of such entities are not addressed in GATT 1994, when will they be addressed, if ever?

2. The same publication goes on to state that the New Zealand Dairy Board does business in an anticompetitive and antifree trade manner.

Do the practices of the New Zealand Dairy Board violate U.S. antitrust laws? Before Congress votes to approve the GATT agreement, should not the Department of Justice thoroughly review the question of whether the NZDB violates the antitrust laws of the United States? What changes in the GATT agreement or implementing legislation are needed to address this concern?

3. In light of the evidence of the NZDB's price manipulation, it appears that these practices violate the transfer pricing provisions of the Internal Revenue Code to the disadvantage of all American taxpayers.

When will the IRS complete its review in this regard and what action will follow the review? Should Congress ask the General Accounting Office to conduct a timely review of this matter prior to the approval of the GATT by the U.S. Congress?

Mr. Chairman, our concerns are shared by countless dairy men and women trying to make an honest living across the United States. We represent individuals who cannot count on quick returns on their money and who cannot abandon their livelihoods overnight even if they chose to do so.

We have prepared a suggested list of legislative initiatives (see attachment 6 in the committee files) designed to address some of the GATT's failings for the dairy sector. These proposals were incorporated into the draft implementing legislation by the House Committee on Agriculture, but eventually were dropped by the administration. We hereby submit them for the record as part of our formal remarks for your consideration.

We believe that the U.S. Congress should not vote to implement the GATT agreement until Congress is provided the answers to these important questions. Mr. Chairman, thank you for the opportunity to submit this testimony on behalf of America's dairy farm families, manufacturers, and interested trading companies.

LETTER FROM WAYNE N. SCHELLE, CHAIRMAN, AMERICAN PERSONAL COMMUNICATIONS

NOVEMBER 16, 1994.

The Honorable ERNEST HOLLINGS,
U.S. Senate,
Washington, DC 20520

DEAR SENATOR HOLLINGS: American Personal Communications thanks you for permitting us to participate in yesterday's hearing on the PCS pioneer preference policy. We want to clarify briefly the following seven points that came up at the hearing (and we request that you make this letter a part of the hearing record):

1. The FCC *did* unanimously and continuously promise that it would grant pioneers licenses for "free," and the auction legislation did not change that.

2. Pioneers will inject needed competition into markets now controlled by monopolies; the preference policy is strongly pro-competitive.

3. APC and scores of other PCS licensees will rely on APC's PathGuard technology, which formed a major part of the basis of APC's award.

4. GATT's finality provisions do *not* cut off the ability of Qualcomm and PacTel to pursue their own preferences at the FCC and in court, and these provisions have no effect on continuing FCC oversight of the pioneers.

5. The FCC's PCS preference grants were *finalized*, not tentative.

6. The complexity of the pioneer preference process is not the fault of the pioneers; rather, we have been a victim of that complexity.

7. GATT will bring in funds for the taxpayers that otherwise would be lost and will not require the Treasury to forego any funds it otherwise would have received.

1. *The FCC held out that it would grant pioneers their licenses for free, and the auction legislation did not change that.* The fact is that the FCC does not have the authority, and has never had the authority, to charge fees for licenses beyond cost-based regulatory fees. This principle has been well settled in the courts and upheld by Congress over and over again. Congress made an exception for auctions, but explicitly provided that the pioneers would not be subject to auctions. Therefore, the

only choice remaining to the FCC was to grant the pioneers their licenses for "free" (if one ignores their high-risk investments and full disclosure of confidential information), as had been repeatedly held out to them over years of unanimous FCC decisions applying and upholding the preference policy (see attached). The FCC consistently held that pioneers would be "guaranteed" a license, not an option to pay for a license, as a "significant reward" for their innovation. Commissioner Barrett was correct in testifying that one could reasonably believe the FCC had promised the pioneers a free license—that is precisely what the FCC did, and precisely how a reviewing court would interpret the policy. The effect of GATT is to cure the so-called defect in the FCC's statutory authority by imposing very, very heavy fees on pioneers.

2. *There will be no "monopoly" as a consequence of the pioneer preference program; to the contrary, pioneers will inject needed competition into monopoly markets.* As competitors, the pioneers will face up to five other PCS licensees, one or more ESMR licensees, and two well-entrenched, established cellular rivals in their markets. The pioneers will compete with all of these other wireless service providers and ultimately will provide competition to the wireline monopolies. The pioneer preference program in PCS is pro-competitive.

The grant of the preference licenses will not have any competitive impact on the other wireless competitors in the pioneer markets. In 1982, NYNEX received a cellular license for the New York City MSA for free. Five years ago McCaw bought the other cellular license in that market, reportedly for approximately \$260 per pop. Yet McCaw did not refrain from the deal because of the competitive disparity between the two sets of acquisition costs. This kind of situation occurs over and over again in businesses involving FCC licenses and in other businesses generally. This situation entails no adverse competitive impact, and the long-discredited argument that it does is regarded by economists as the "sunk cost fallacy." Yet that was the basis of the PacTel appeal in court, which the FCC adopted as its reason for asking for the case back from the courts and charging the pioneers extremely large fees. When confronted by unanswered economic evidence showing that this theory was fundamentally flawed, PacTel backed away from it.

3. *APC's technology will be used throughout the Nation and addresses an entirely different, but complementary, need from Qualcomm's technology.* APC and hosts of other PCS licensees will rely on APC's crucially important PathGuard (TM) technology for sharing spectrum with microwave users. APC's PathGuard technology is not a rival of, competitive with or substitutable for the Qualcomm radio technology. APC's sharing technology can be used with all radio technologies—including Qualcomm, Omnipoint and all other proposed PCS standards—to make the sharing of frequencies with existing microwave users both effective and remarkably efficient. APC contracted with Qualcomm to test APC's technology, using Qualcomm's equipment. The tests were successful and proved that APC's PathGuard technology works in concert with Qualcomm's radio technology. We also have tested it with other digital technologies and had the same successful results. We have licensed PathGuard, on reasonable terms, to Motorola and Northern Telecom to permit all PCS licensees to have access to its benefits.

4. *GATT's finality provisions do not cut off appeals and reconsideration of various Qualcomm and PacTel claims.* Even if GATT passes, disappointed pioneer applicants will continue to have appeal and reconsideration rights with respect to the Commission's denial of their pioneer preference requests. Qualcomm may deserve a pioneer preference, but the way for it to pursue a preference is in conjunction with its own application as to which the GATT legislation would have absolutely no effect. PacTel's allegation that GATT would cut off the FCC's right to enforce its requirement that the pioneers use their own technology is also flat-out wrong. The FCC's enforcement powers would be wholly unaffected by GATT. Similarly, PacTel is dead wrong in arguing that the GATT finality provisions would have any effect whatsoever on the FCC's ability to police any ownership transfers by Cox or any other pioneer.

5. *The pioneer preference grants were not "tentative."* The FCC issued "tentative" pioneer grants in October 1992. The FCC "finalized" those grants in December 1993. (The words, "tentative" and "finalized," were terms used by the FCC to designate two different steps in its especially elaborate pioneer preference process.) To be sure, those finalized grants were subject to reconsideration and appeal, as all actions by the FCC are, but Mr. Fein's continued insistence on referring to the grants as "tentative" was clearly intended to obscure the fact that the FCC had finalized the pioneer preference grants.

What yesterday's hearing also did not make clear is that the FCC had crafted its pioneer preference program to incorporate various more rigorous and lengthy procedures than normal grants by the FCC. Thus, pioneers filed numerous quarterly re-

ports containing thousands of pages of research results and technical data (APC has filed 17 reports to date), established additional special opportunities for public comment on the qualifications of the pioneers, and provided for an extra FCC evaluation step—the finding that pioneers had been tentatively chosen—which injected a further safeguard and set of procedural steps, in addition to the normal FCC processes.

The award of pioneer licenses without further appeal in this case is especially justified by the unusually rigorous procedures already implemented by the FCC to review the qualifications of the pioneers and to provide for public comment on them.

6. *This has been a Byzantine process, but that is not due to the pioneers.* The complexity of this process has largely been due to government actions, to which APC and the other pioneers have had to react. Had the Commission's original pioneer preference program remained unchanged, the only controversy would be with respect to the merits of each pioneer's innovations. While those issues would have been contentious, they would not have risen to the level of procedural complexity that your committee confronted yesterday.

- However, Congress then adopted spectrum auction legislation. In doing so, it focused on how the pioneers should be treated in light of the resulting change in the FCC's licensing process and made clear that the FCC had the authority to continue with its preference policy.

- But as a result of the legislation and as a further precaution, the FCC launched a new rulemaking to reconsider whether it should proceed with its preference program taking into account the auction legislation. It decided that it should do so and awarded *finalized* preferences in December 1993.

- Opponents of the preferences took the FCC to court, claiming that the FCC should charge the pioneers. Before the court had made any decision and before the FCC or the pioneers had even had a chance to file their briefs, the FCC took the most unusual step of (1) asking for the preference appeal case back from the court to change its mind based on an economic theory that PacTel later abandoned and (2) imposing an unfair 90 percent payment formula on the pioneers, which would, in some cases, impose a larger fee on them than if they had done no pioneering and merely bid for the licenses at auction.

- In this same timeframe, not at our request and against our interests, the government began to consider including the pioneers in the upcoming the government GATT legislation. We had to respond to that as well.

In short, the transition from lotteries to auctions and the inclusion of the pioneers in GATT were all government-initiated steps that created uncertainty and threatened the survival of the pioneers as PCS providers. We pioneers did not create any of these complications, though we have repeatedly been their victims.

7. *The GATT legislation will not cost the government and the taxpayers anything, but will bring in funds that otherwise would be lost.* First, the Administration and many in Congress believe that the FCC will lose the appeal of its decision to charge the pioneers, in which event the U.S. Treasury and taxpayers will receive no revenues from the pioneer licenses (other than the tremendous, wide-ranging benefits the pioneers will have made possible, including the PCS auction revenues).

Second, although nobody knows for sure what the difference between the GATT and FCC payment formulas will be, the study of Dr. Jack Gould, distinguished professor of economics and former Dean of the University of Chicago School of Business, attached to my written testimony, demonstrates that the two formulas will yield essentially consistent results. The PacTel figures change constantly, are internally inconsistent, and are based on cellular markets, not PCS markets. Mr. Fein's figures are drawn out of thin air and are, on their face, unreliable. The GATT formula contains a fixed floor, eliminates anomalies in its benchmark, reflects a compromise among various government officials as to the 85 percent figure, and terminates a four-year-old procedure that has been due processed to death.

Thank you again for your courtesy at the hearing Monday. If there are further points that need to be clarified, please let me know.

Sincerely,

WAYNE N. SCHELLE,
Chairman.

The FCC's Development and Reaffirmation of the Preference Policy and the Guarantee of a License as a Reward

Date	Event
April 12, 1990	FCC unanimously issues Notice of Proposed Rulemaking proposing pioneer preference policy.

The FCC's Development and Reaffirmation of the Preference Policy and the Guarantee of a License as a Reward—Continued

Date	Event
April 9, 1991	FCC unanimously adopts preference policy.
February 13, 1992	FCC unanimously affirms pioneer preference policy on reconsideration.
June 16, 1992	FCC unanimously awards preference to VITA in low-earth orbit satellite service.
July 16, 1992	FCC unanimously awards preference to Mtel in narrowband PCS.
August 5, 1992	FCC unanimously issues preference decision in "big" LEO satellite docket.
October 8, 1992	FCC unanimously awards preferences to APC, Cox and Omnipoint for broadband PCS.
December 10, 1992	FCC unanimously awards preference to Suite 12 Group for 28 GHz wireless cable.
January 14, 1993	FCC unanimously affirms preference award to VITA.
March 8, 1993	FCC unanimously affirms preference policy on further reconsideration.
June 24, 1993	FCC unanimously affirms award of preference to Mtel.
October 21, 1993	FCC initiates rulemaking proceeding to assess preference policy in light of auction authority, but unanimously holds that preference policy "exempts pioneer's preference licenses from payment."
January 28, 1994	FCC unanimously determines to finalize PCS pioneer preferences without requiring payment.
February 4, 1994	FCC unanimously affirms award of preferences to APC, Cox and Omnipoint without requiring payment.

PREPARED STATEMENT OF KENNETH WHITE, VIRGINIA TAXPAYERS ASSOCIATION

My name is Kenneth White and I am President of the Virginia Taxpayers Association. We want to heartily commend you, Mr. Chairman, and this Committee for holding these hearings and rightfully insisting that the Senate have adequate time and information to fully consider this extremely important legislation before this nation makes a very serious misstep.

The Virginia Taxpayers Association, now in its 22nd year, is the leading state taxpayer organization in the nation in number of appearances before U.S. Senate and House committees. We are also the leading state organization opposing GATT-WTO, having begun our campaign back in March, four weeks before House Minority Leader Newt Gingrich first warned the new pact could lead to one-world government. I have spoken in on-air TV and radio interviews in Virginia on this subject, and an article I wrote on GATT that appeared in the Lynchburg, Virginia News & Advance October 23, 1994 is attached to my statement (may be found in the committee files).

The person who has more information about the GATT implementing resolution than any other member of Congress from Virginia is Rep. L.F. Payne (D) from the 5th District, who as a member of the Trade Subcommittee of the House Ways and Means Committee has actually worked in developing this legislation. I am attaching to this statement a copy of the letter on GATT which Congressman Payne has been sending to his constituents explaining why he is opposed to this measure. Incidentally, I personally happen to be an independent, and neither I nor the Virginia Taxpayers Association have supported any of Mr. Payne's election campaigns.

Congressman Payne states in his letter that "nearly half a million textile and apparel jobs are threatened" by the GATT provision that phases out the Multi-Fiber Arrangement over 10 years. We believe Mr. Payne's estimate of U.S. textile and apparel jobs likely to be lost is very conservative, because we have encountered estimates of double that amount. The Bureau of Labor Statistics reported a total of 1,653,000 persons employed in August, 1993 in manufacture of textile mill products, and apparel and other textile products, and we are not aware of any products in these categories that could not potentially be manufactured more cheaply in certain other countries of the world if GATT is passed. The Roanoke, Virginia, Times & World News in an editorial favoring GATT October 28, 1994 actually admitted that "Under GATT * * * at the end of (a 10-year period) U.S. textile mills may well be a thing of the past, unable to withstand the international competition." The Roa-

noke paper went on to try to claim that such a blowout would nevertheless be beneficial. In language reminiscent of Marie Antoinette's memorable "Let them eat cake!" the Roanoke editorial haughtily made light of "the loss of low-wage, low-skill jobs in places like textile mills," and said that it would "be more than offset" by results from GATT. The assumption is that foreign markets for many other U.S. products will be expanded. The problem is that, with the relatively high-cost U.S. infrastructure of wages, benefits, safety and environmental controls, fewer U.S. products will be competitively priced in the world market. Economist Pat Choate has pointed out that Japan is on the verge of becoming the world leader in all high-tech manufacturing, and that is simply not an area we can count on for big gains. The Virginia Taxpayers Association has been a leading spokesman in our state for better education, and all members of Congress are aware of repeated findings in studies of our nation's education system that today the U.S. is not developing enough outstanding scientists and engineers among our young people. And Choate's revelation that 60 percent of our nation's recent capita investment has left our country and gone offshore—which should concern this Committee especially—is not an augur of a bright future for selling U.S. products abroad.

It cannot be repeated too often that for the economy of our nation to survive, we must have a thriving manufacturing industry inside the geographical boundaries of the United States. An article in the Lynchburg, Va. News & Advance by the newspaper's top political reporter, Steve Vaughan, entitled "Has America Given Up On All Manufacturing?" strongly supports this view. The article is attached to this statement. It should also be a recognized part of Economics 1-A, for example, that defense in an emergency of a nation like the United States cannot be secure unless that nation has an existing capacity to manufacture adequate quantities of everyday necessities like shoes. Unfortunately, too many present policy planners in Washington have forgotten that elementary lesson.

Looking at the implementing resolution (H.R. 5110) for the Uruguay Round of multilateral trade negotiations, we find in the foundational Section 102 deliberate fraud that is startling even to those of us who have testified before Congress on the basic meaning of income tax law, as I have. Section 102(a)(1) states:

"(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect."

The point is, the drafters of H.R. 5110 knew that this Section 102(a)(1) is totally meaningless, because it attempts to contend with a basic provision of the international agreement itself, to wit, Article XVI, paragraph 5, which states:

"No reservations may be made in respect of any provision of this Agreement."

In other words, the United States officially signed the basic agreement, and all the other signatory nations will agree that nothing which the U.S. in its later domestic actions pretends to add to this basic international law such as Section 102 will have any effect. It's obvious Section 102 was put in just to make the implementing resolution look good to inquiring lay persons, or perhaps to mislead careless members of Congress who didn't want to read the entire measure.

We in the Virginia Taxpayers Association are also well aware that by designating H.R. 5110 as a resolution rather than a law, Congress recognizes that its subject matter would not properly constitute a regular statute. (*McDowell v. People*, 68 N.E. 379, 204 Ill. 499; *Conley v. Texas Division of United Daughters of the Confederacy*, Tex.Civ.App., 164 S.W. 24, 26.) See also:

"The chief distinction between a 'resolution' and a 'law' is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a *temporary effect* on such particular thing, while by a 'law' it is intended to *permanently direct and control matters* applying to persons or things in general." Ex parte Hague, 104 N.J.Eq. 31, 144 A. 546, 559. (From Black's Law Dictionary, Revised 4th Edition, emphasis added.)

On all legislative measures there is room for differences of opinion on the likely results of such legislation, but there should be no difference of opinion on what the already printed text actually says. Yet we hear Secretary Bentsen and U.S. Trade Representative Mickey Kantor trying to explain that "the WTO will continue the practice of decision-making by consensus followed under GATT 1947." PERIOD, and they stop right there, to try to persuade Americans we don't have anything to worry about. You Committee members know only too well that that is only the very first sentence of Article IX, Decision-Making. The very next sentence of Paragraph 1, of course, states:

"* * * (W)here a decision cannot be arrived at by consensus, the matter at issue *shall be decided by voting.*" (Emphasis added)

The fact that the U.S. has only one vote out of 124 nations, with no veto power, is the ominous provision that should frighten all clear-thinking members of Congress, as well as other citizens, in view of the long-standing opposition to U.S. policies by the multitude of less-developed nations who are in on this dangerous international trade agreement. The further fact that Bentsen and Kantor are so obviously deceptive in their statements is the huge warning flag that there is falsity in the administration's entire presentation of GATT. For example, in Kantor's "debate" with Pat Buchanan on ABC News Nightline October 4, 1994, Kantor twice referred to the agreement as a "treaty" (ABC transcript No. 3487, page 2), when the administration's fixed position is that the document is only an "executive agreement" so as not to require a two-thirds Senate majority approval, which the administration knows an actual WTO treaty could not get. Further adding to the justifiable climate of suspicion about the agreement is administration-encouraged general media silence about GATT, particularly on network TV evening news. If the Clinton health care measure, which potentially affected just 15 percent of the nation's economy, got as much coverage as it did on TV, how is it that a matter of even greater import like GATT, affecting 25 percent of the economy, has hardly been discussed at all by the nation's omniscient news managers? And why did Thomas Friedman of the Wall Street Journal, a supporter of GATT, admit on public television's Washington Week in Review that both the administration and congressional leaders would like such an important measure to go through Congress quietly?

Finally, far too little has been said about the fact that this terrible agreement forever makes legal present inhuman child slave labor in the most underdeveloped third world countries. Such non-union employment slavery of children as young as 6, utilizing the latest manufacturing technology newly provided by U.S. investors and others, will take away millions of jobs from hard-working citizens and families of the United States, leaving them to scrape up the bottom of the barrel to provide a mere subsistence living. And U.S. taxpayers today cannot afford the welfare payments the government is already handing out to less-deserving persons.

It is clear, in conclusion, that Congress should not approve any implementing resolution of the Uruguay Round of multilateral trade negotiations, and further that upon convening, beginning November 29, 1994, both Houses should immediately adjourn without taking action. Congress has until June, 1995 to act on this agreement, and therefore no extraordinary occasion (U.S. Constitution, Article II, Section 3), which President Clinton has attempted to cite in calling this special session, exists. This concludes our statement.

PREPARED STATEMENT OF THE AMERICAN FOREST & PAPER ASSOCIATION

The U.S. forest and paper industry urges all Members of Congress to approve the implementing legislation for the Uruguay Round agreements of the General Agreement on Tariffs and Trade (GATT) before the end of the 103rd Congress. The time to pass the GATT implementing legislation is now.

As a national trade association, the American Forest & Paper Association (AF&PA) represents a vital U.S. industry which accounts for over seven percent of total U.S. manufacturing output. The industry employs some 1.4 million people and ranks among the top 10 manufacturing employers in 46 states. In 1993, exports for the U.S. forest products industry total led \$17 billion.

The U.S. forest products industry has consistently supported the market access provisions/goals of the Uruguay Round negotiations from their very inception because exports have been, and will remain, the fastest growing segment of our business. This industry has been ranked among the most competitive in the world. We have historically relied on competitive strength—not tariff protection—to win markets.

The priority objective for the U.S. forest products industry in the Uruguay Round market access negotiations was the elimination of all tariffs on wood and paper products in five years. The industry, officials of several Administrations and many Congressional supporters worked long and hard to achieve this ultimate goal of zero tariffs in five years.

Unfortunately, the GATT agreement falls short of this industry's goals: we did not achieve the elimination of tariffs on wood products, and although tariffs are eliminated on paper and paper products, the reductions will take a decade to achieve, instead of the five years we had sought. This result is entirely unsatisfactory, inasmuch as it prolongs a substantial, structural tariff disadvantage for U.S. wood and paper producers.

However, the implementing legislation gives USTR the necessary authority to continue negotiations with our trading partners to eliminate this inequity. We are

further encouraged by supplemental language which identifies wood and paper as priority sectors where the unfinished business of the Uruguay Round will be pursued with particular vigor.

A successful conclusion of these negotiations would mean an estimated \$10 billion in exports to our industry. The bill gives USTR the authority to begin these talks immediately. This is why we urge you to pass the GATT implementing legislation now.

In other areas, the final results of the lengthy legislative drafting process have resulted in implementing legislation which promotes some safeguards relative to issues in the Agreement such as environmental subsidies, which are of deep concern to our industry and others. (See the attached position paper for a more detailed account of specific provisions in the implementing legislation which AF&PA strongly supports.)

The American Forest & Paper Association is supporting implementation of the Uruguay Round agreement, and our members urge Members of Congress to act now and pass the GATT implementing legislation this year.

AF&PA URGES SUPPORT FOR PASSAGE OF THE GATT IMPLEMENTING LEGISLATION THIS YEAR

A. Residual Uruguay Round Proclamation Authority

For example, the GATT implementing legislation gives the U.S. Trade Representative (USTR) the authority to continue talks aimed at full tariff elimination, and the Statement of Administration Action (SAA) portion specifically identifies paper and wood as priority sectors for post-Uruguay Round agreements and refers to Congressional desire to achieve the elimination of tariffs for wood products and the acceleration of tariff reductions on paper products in future negotiations.

This single provision could help the U.S. forest and paper products industry recapture a cumulative \$10 billion in potential exports lost when our trading partners refused to eliminate their tariffs.

B. Limits on Greenlighting of Environmental Subsidies

AF&PA strongly supports this provision which states that allowable "greenlighted" environmental subsidies should be limited to one such subsidy per "new environmental requirement" and per facility. It also stipulates that the term "nonrecurring measure" must be carefully construed to prevent repeated noncountervailable subsidizing of the costs of individual new environmental requirements. It also states that a reasonable reading of the provision would not allow subsidizing authorities to impose a multitude of cosmetically different environmental requirements in order to provide a vehicle for the repeated subsidization of a particular facility.

C. Article Nine Remedy for Adverse Effects of Greenlighted Subsidies

AF&PA strongly supports the provision which allows U.S. industries to obtain relief from the injurious effects of green-lighted subsidies under U.S. law. This provision would allow the USTR to take action under Section 301 of the 1974 Trade Act against subsidizing countries who block the ability of the World Trade Organization (WTO) to act under Article Nine against subsidy abuses, or against offending countries who refuse to comply with WTO action.

D. Trade and the Environment

AF&PA supports multilateral negotiations which establish disciplines on "green protectionism," the use of "environmental" measures to protect markets. At the same time, we would oppose any substantial modifications of existing trade rules to permit the widespread use of trade measures to achieve environmental objectives. For this reason, we believe that the requirements in the current bill for extensive Congressional and industry consultations prior to U.S. agreement on any GATT/WTO Council action provides an important safeguard.

LETTER FROM MARK SILBERGELD, DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION

OCTOBER 24, 1994.

Senator ERNEST HOLLINGS,
U.S. Senate,
Washington, DC 20510

DEAR CHAIRMAN HOLLINGS: Thank you for providing the opportunity for Consumers Union to discuss its views on the implementation of the GATT Uruguay Round legislation. It is important to provide a public forum in which people may comment on our country's trade policy and your decision to hold these hearings is laudable.

During the course of the question and answer period, Senator Dorgan requested that Consumers Union provide him with a list of sources that we had relied upon to determine the consumer benefits of the Agreement. I have supplied as an attachment to this document, a list of sources we reviewed before arriving at our decision to support the implementation of the Agreement. I would note that in order to ensure a full understanding of the issues, we looked at a wide variety of items, including materials from our colleagues who do not support the Agreement.

A review of the record also indicates that I promised to send copies of GATT dispute settlement panel discussions. I noted from our exchange that a copy of the most recent panel decision relating to CAFE standards had already been provided to you, so will enclose instead a copy of the "Beer II" panel decision. This case should provide a good example of the detail with which these panel decisions disclose the arguments made by the parties and the panel's consideration of them.

Again, I want to thank you. Please do not hesitate to call on Consumers Union if you have any outstanding questions regarding the Uruguay Round Agreement or our testimony.

Sincerely,

MARK SILBERGELD,
Director, Washington Office.

[Miscellaneous information, articles, and reports may be found in the committee files.]

JOINT LETTER FROM BRUCE A. ACKERMAN, STERLING PROFESSOR OF LAW AND POLITICAL SCIENCE, YALE UNIVERSITY LAW SCHOOL AND JOHN H. JACKSON, HESSEL E. YNTENA PROFESSOR OF LAW, UNIVERSITY OF MICHIGAN LAW SCHOOL

NOVEMBER 11, 1994.

Senator JOHN C. DANFORTH,
U.S. Senate,
Washington, D.C. 20510-2502

DEAR SENATOR DANFORTH: The Congress will soon vote on a proposed statute that will authorize the President to ratify the important international agreement which embodies the results of the Uruguay Round Negotiations, including the establishment of a World Trade Organization. The proposed statute will also change the law of the United States to the extent necessary to implement these negotiated results.

Some last minute questions have been raised about the constitutionality of this statutory procedure. We enclose a memorandum from a group of distinguished law professors who have examined these questions and have concluded that they are unfounded. The express constitutional grant of power to Congress "to regulate Commerce with foreign Nations" provides a strong foundation for the statutory procedure to approve the WTO and Uruguay Round. The memorandum also discusses the extensive precedents and important policies that support the statutory procedure in this case.

We urge you to consider the WTO and the Uruguay Round on its merits, without allowing the debate to be deflected into a unnecessary constitutional detour.

We would be pleased to assist you further concerning this matter if you wish to call upon us.

BRUCE A. ACKERMAN,
Sterling Professor of Law and Political Science, Yale University Law School.

JOHN H. JACKSON,

Hessel E. Yntema Professor of Law,
University of Michigan Law
School.

MEMORANDUM OF LAW

RE: Statutory Procedure for Approval of the Uruguay Round Trade Negotiations and the WTO.

FROM: Professor Bruce Ackerman, Yale University, School of Law; Professor Abram Chayes, Harvard University, School of Law; Professor Kenneth Dam, University of Chicago, School of Law; Professor Thomas Franck, New York University, School of Law; Professor Charles Fried, Harvard University, School of Law; Professor David Golove, Arizona University, School of Law; Professor Louis Henkin, Columbia University, School of Law; Professor Robert Hudec, University of Minnesota, School of Law; Professor John H. Jackson, University of Michigan, School of Law; Professor Harold Hongju Koh, Yale University, School of Law; and Professor Myres McDougal, Yale University, School of Law.

DATE: November 11, 1994.

As professors of constitutional law and international law, we believe that the president's decision to submit the WTO and Uruguay Round Agreement for approval by both Houses of Congress is fully justified by the language, the history, and the principles of our Constitution.

1. Text

Article two of the Constitution empowers two-thirds of the senate to give advice and consent to the President to ratify treaties. But it does not grant the senate a constitutional monopoly over international agreements. To the contrary, Article one of the constitution provides equally important grants of power to Congress, including an express authorization to "regulate Commerce with foreign Nations." If both Houses find that approval of the WTO is "a necessary and proper" way of exercising such powers, the Congressional decision merits respect under basic principles announced long ago by Chief Justice Marshall in *McCulloch v. Maryland*: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate * * * which are not prohibited * * * are constitutional."

As Chief Justice Marshall's great statement suggests, a contrary conclusion might be justified if the Constitution had explicitly said that "only" the senate could give its advice and consent to international agreements. But the text does not contain any such limiting language. While it fully empowers the Senate to consider treaties under Article two, it equally empowers the Congress to confirm Executive agreements under Article one.

This textual point was recognized during the earliest days of the Republic. James Madison dismissed the contrary view summarily: "nothing more was necessary on this point than to observe that the constitution had as expressly and exclusively vested in Congress the power of making laws, as it had invested in the President and Senate the power of making treaties." (Annals, 4th Congress, 1st Sess. 774 (1796). Madison's position has been adopted by the American Law Institute, after extensive deliberation, in its Restatement (Third) of Foreign Relations Law. (Section 303).

The crucial point is to recognize both Article one and Article two for what they are: great and independent grants of power, each of which suffices to justify the creation of international obligations. This is by no means the only case in which the Constitution creates multiple legislative procedures for accomplishing the same end. The text provides no fewer than four ways of passing a constitutional amendment; and there are, of course, two ways of passing a statute—one with, and one without, the cooperation of the President. Similarly, Articles one and two set up alternative systems through which the nation can commit itself internationally—one with, and one without, the cooperation of the House.

Note, moreover, that the text prescribes the same supermajoritarian remedy whenever one branch is excluded from the lawmaking process. In creating statute law, a two-thirds vote of both Houses of Congress is required to override the Presidential veto. In creating international obligations under the Treaty Clause, two-thirds of the Senate is required to offset the absence of the House.

This subtle textual system puts the Senate at the very center of the international agreement making process. We believe that the Senate has made a sound constitutional decision in considering the WTO and Uruguay Round Agreement as a Congressional-Executive Agreement, and not as a "treaty." This decision is squarely in line with both fundamental constitutional principles and the overwhelming weight of recent precedent. There is no reason to allow last-minute unfounded constitu-

tional objections to cause any doubts about the WTO—the result of many years of fruitful collaboration between Congress and the Executive that should serve as a constitutional exemplar for future decision making.

2. *Precedents*

So far as the constitution is concerned, the Clinton Administration is not breaking new ground in submitting the WTO as a Congressional-Executive Agreement. It is following the same course marked out by Presidents Truman and Eisenhower in connections with the submission of the Charter of the international Trade Organization in 1948 and the Charter of the Organization for Trade Cooperation in 1955. Although these initiatives were later withdrawn, their constitutional propriety was broadly recognized by leading members of both political parties in Congress.

Indeed, the senate has cooperated with the House in invoking its Article one powers on a wide front over the last fifty years. Congressional-Executive Agreements have served us well on a broad range of issues from Bretton Woods to SALT I. Within the area of foreign trade, the procedure has been especially successful, generating a series of breakthrough agreements with Israel, Canada, and more recently, with both Mexico and Canada in the NAFTA. Moreover, all the trade agreements under the original Reciprocal Trade Agreements Act of 1934, and all subsequent renewals and matters concerning the GATT, have been accomplished under the authority of Article one. If the Senate suddenly gave credence to belated efforts to use the Treaty Clause to derail the WTO, it would immediately destabilize a host of America's solemn commitments, as our allies wondered which of their many Congressional-Executive Agreements were open to constitutional question.

3. *Principle*

As we have seen, the text puts the senate at the center of the constitutional process—it is up to it to decide whether a particular international agreement is best considered under Article one or Article two. If a majority of the senate insists on Article two, no progress can be made along the Article one track. The Senate's exercise of constitutional judgment should be informed by many factors, depending on the character of the particular agreement.

In the case of the WTO and Uruguay Round Agreement, there are especially strong reasons to use the statutory procedure authorized by Article one rather than the Treaty Clause in Article two. First, the Agreement is a regulation of "foreign commerce" within the plainest meaning of the constitutional phrase. second, approval and implementation of the Uruguay Round will require complex legislation in any event, and so it is wise to invite the broader democratic participation of the House from the beginning. Third, Article I, Section 7 of the Constitution requires that all revenue bills originate in the House. Given the WTO's special impact on tariffs (and therefore revenues), it is particularly appropriate to involve the House.

The Senate was also on firm ground in considering the success with which the Article one procedure has dealt with a series of other complex trade negotiations—from the Tokyo Round through the Israel and Canada Free Trade Agreements to NAFTA. In explicitly authorizing a fast-track two-House procedure for the Uruguay Round, the senate was self-consciously building on these earlier successes. In doing so, it was exhibiting the best of our constitutional tradition—making nuanced judgments on the basis of a rich array of factors.

Even leading critics confess that "drawing a clear boundary around the treaty category is difficult." (Memorandum from Professor Laurence Tribe to Hon. Walter Dellinger et al., October 5, 1994, p. 17). But if this is so, there is every reason to defer to the Senate's considered judgment in approving the "fast-track" procedure for the Uruguay Round.

In making this judgment, the Senate has continued the tradition of modern Presidents and Congresses—both Democratic and Republican—for the consideration of such matters. Its judgment is firmly anchored in the opinions of constitutional thinkers ranging from James Madison to the American Law Institute. There is no reason for the Senate to abandon its commitment to bicameral deliberation in the case of the World Trade Organization.

QUESTIONS ASKED BY SENATOR PRESSLER AND ANSWERS THERETO BY MR. KANTOR

Question. Does the Administration support Alice Rivlin's letter of August 8, 1994, that states "we do not believe it is necessary to sacrifice budget discipline to pass GATT in the Congress", or does the Administration support waiving the budget since a point of order lies against the legislation implementing GATT that was submitted to Congress?

Answer. The Administration supports both Alice Rivlin's August 8 letter, and the waiver of any budget point of order that might be raised against the legislation. The Budget Enforcement Act (BEA) was passed on a bipartisan basis by Congress in 1990 and was signed into law by President Bush. Its scoring rules are the statutory basis by which budget discipline is enforced through the threat of a sequester. Under the BEA, new legislation can be paid for with any combination of new deficit-reduction measures and previously enacted budget savings. The GATT legislation will not result in a sequester because it is fully consistent with the financing requirements of the BEA. Budget discipline has been maintained, not sacrificed.

For technical reasons, under the Congressional Budget Act (CBA), however, no scoring credit is provided for savings from legislation which was enacted prior to passage of the most recent Congressional Budget Resolution (i.e., PAYGO balances). However, there is ample precedent on a bipartisan basis for Congress to use such PAYGO balances to help offset the costs of legislation, even though this usage requires a waiver of the CBA. Consequently, this usage of PAYGO balances, which is permitted by the BEA, does not sacrifice budget discipline.

In addition, neither the BEA nor the CBA, the two laws which govern budget discipline, have any ten-year budget financing requirements. In 1993 and 1994, for the first times ever, the Budget Resolution—which is not a statute—included a new section which calls for ten-year financing and which applies only in the Senate. There is no statutory requirement under the BEA or the CBA for ten-year financing for GATT. The Administration made clear from the beginning that it would comply with statutory requirements, and it has done so. Therefore, the Administration supports any necessary waiver.

Finally, the GATT agreement will spur worldwide economic growth which will increase growth even further in the U.S. GATT cuts world wide tariffs by almost \$750 billion over 10 years. These tariff cuts by our foreign trading partners will help U.S. exports and will raise America's standard of living.

Question. Does the Administration disagree with the scoring by the Congressional Budget Office that shows the implementing legislation to be \$1.6 billion short of financing GATT over the first five years?

Answer. GATT is fully financed under either OMB or CBO scoring. This financing includes some use of existing PAYGO balances—only \$.6 billion using OMB scoring, and only \$1.6 billion using CBO. Congress has repeatedly used "PAYGO balances" to cover the costs of direct spending legislation that was not fully offset when enacted. There are five examples of direct spending legislation enacted during 1991–92 that were offset by using PAYGO balances for some or all of the offsets. In all but one case, no Senator raised a Budget Act point of order against these bills, and in the one case that a Budget Act point of order was raised, the Senate voted 88 to 8 to waive. Moreover, four out of the five bills passed without a Senator even asking for a recorded vote on the measure.

Question. Does the Administration support the statement of Alice Rivlin, in the August 8 letter, which is: "in fact, we fear that if Congress were to reverse the progress that has been made on budget discipline over the past few years, we could lose more than we gain from the GATT accords?"

Answer. Yes. This Administration has reversed the decade-long trend of rising deficits. In fact, the deficit declined by \$87 billion in the first two years of this Administration. As a result, the economy has entered a solid recovery and expansion, creating 4.6 million new jobs, 4.2 million of them—or more than 91 percent—in the private sector. Business investment in equipment has grown at a rate more than eight times faster than in the preceding four years. It is vital that we not put this new habit of fiscal discipline—and its economic reward—at risk. That is why we have proposed full offsets for the GATT implementation legislation.

Question. What is the Administration's position on the budgetary point of order that lies against the GATT implementing legislation?

Answer. As is stated above, the Administration supports waiver of any budget point of order raised against the GATT legislation.

Question. I have been very concerned about the use of the PAYGO surplus to make up the balance of funds necessary to offset the agreement's reduction in tariff revenues. If the Administration consciously chose to offset the agreement with tax increases, which I disagree with, why didn't you fully offset the agreement? Haven't any surplus tax increases or direct spending cuts really been used already to cut the deficit? Did you consider using spending cuts? With a budget resolution waiver necessary, and a Budget Act waiver probably necessary, why are you even proposing tax increase? If you are already subject to a 60 vote hurdle, why impose a tax increase?

Answer. As stated above, the BEA was passed on a bipartisan basis by Congress in 1990 and was signed into law by President Bush. Its scoring rules are the statu-

tory basis by which budget discipline is enforced. Failure to abide by these rules results in a real sanction, a sequester.

Under the BEA, new legislation must be fully offset with a combination of new deficit reduction measures and previously passed budgetary savings which have not been spent (PAYGO balances). The Administration's GATT offset package—which includes new deficit reduction measures and a very modest amount of PAYGO balances—meets these requirements of the BEA. Therefore, the GATT legislation, if enacted, would not trigger a sequester.

With respect to spending cuts, we did more than just “consider” them—we proposed and actively supported them. In fact, according to either CBO or OMB estimates, more than 60 percent of the specific financing proposals are outlay reductions. Measures that would improve the compliance rate of various taxes or shift the timing of collections of various taxes compose most of the remainder of the specific proposals. As a result, the net impact of the bill would be to cut taxes; that is, customs taxes would go down by much more than revenues raised by compliance measures or timing shifts.

QUESTIONS ASKED BY SENATOR HUTCHISON AND ANSWERS THERETO BY MR. KANTOR

Question. It is my understanding that the National Governors Association and other state organizations have endorsed the bill following the addition of a consultation process for state governments whose laws are challenged as trade barriers, and a consultation process for bringing their laws into compliance with the Uruguay Round agreements. Does this consultation process really solve the problem, or does the agreement signed by the federal government cause states to lose control over their own affairs?

a. Are there areas besides environment, consumer safety, and health, where state laws might be overridden?

b. Does the bill's referral in section 102(a)(1) to any U.S. law include any state law, or does that refer to federal law?

c. In retrospect, do you wish you had called it something other than the World Trade Organization?

Answers. The Uruguay Round agreements do not deprive our state governments of control over matters subject to their authority, while recognizing that the proposed World Trade Organization will have no power to make or order any change in U.S. laws, state officials requested assurances in the implementing bill that they will be fully informed and consulted whenever state laws are the subject of WTO dispute settlement procedures. As a result of the consultation procedures included in the bill, the leadership of the National Association of State Attorneys General expressed their satisfaction with the implementing bill. In addition, the National Governors Association, the National Council of State Legislatures, and other state organizations have endorsed the Uruguay Round agreements.

a. A number of the Uruguay Round agreements (like the existing GATT) apply to state as well as federal laws. None of these Agreements, however, overrides state laws.

b. The relationship between the Uruguay Round agreements and state laws is governed by section 102(b) (2) (A) of the bill, which provides that:

“(A) IN GENERAL.—No State law, or the application of such a State law, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with any of the Uruguay Round Agreements, except in an action brought by the United States for the purpose of declaring such law or application invalid.”

This means that the Uruguay Round agreements will have no automatic preemptive effect on state law. The bill bars any private right of action to enforce the Uruguay Round agreements in U.S. courts and leaves the sole authority to apply the agreements against our states with the U.S. Attorney General. The Attorney General's authority under the bill is largely a restatement of his Constitutional powers with respect to the enforcement of U.S. international agreements of this nature.

c. No.

Question. I have been very concerned about the use of PAYGO surplus to make up the balance of funds necessary to offset the agreement's reduction in tariff revenues. If the Administration consciously chose to offset the agreement with tax increases, which I disagree with, why didn't you fully offset the agreement? Haven't any surplus tax increases or direct spending cuts really been used already to cut the deficit?

a. Did you consider using spending cuts?

b. With a budget resolution waiver necessary, and a Budget Act waiver probably necessary, why are you even proposing tax increase? If you are already subject to a 60 vote hurdle, why impose a tax increase?

Answers. As stated above, the BEA was passed on a bipartisan basis by Congress in 1990 and was signed into law by President Bush. Its scoring rules are the statutory basis by which budget discipline is enforced. Failure to abide by these rules results in a real sanction, a sequester.

Under the BEA, new legislation must be fully offset with a combination of new deficit reduction measure and previously passed budgetary saving which have not been spent (PAYGO balances). The Administration's GATT offset package—which includes new deficit reduction measures and a very modest amount of PAYGO balances—meets these requirements of the BEA. Therefore, the GATT legislation, if enacted, would not trigger a sequester.

With respect to spending cuts, we did more than just “consider” them—we proposed and actively supported them. In fact, according to either CBO or OMB estimates, more than 60 percent of the specific financing proposals are outlay reductions. Measures that would improve the compliance rate of various taxes or shift the timing of collections of various taxes compose most of the remainder of the specific proposals. As a result, the net impact of the bill would be to cut taxes; that is, customs taxes would go down by much more than revenues raised by compliance measures or timing shifts.

Question. At the Ways and Means hearing, one of your staff stated that the U.S. prevails in 87 percent of the suits it brings, and loses only half it defends. But he didn't give the proportion of the cases; he just said that we're a party to 1/3 of the cases. Are more cases brought against us than we initiate?

Answer. The result of GATT dispute settlements proceedings can be examined narrowly by looking at the findings in adopted panel reports, or more broadly by examining how the parties in a proceeding resolved their dispute.

Panel Reports Approach

Since the establishment of the GATT in 1947, the United States has been the complainant in some 38 dispute settlement proceedings which have resulted in the adoption of panel reports. We have obtained favorable panel rulings in 35 of those proceedings (i.e., 87 percent). On the other hand, since 1947 the United States has been the defendant in some 33 dispute settlement proceedings which have resulted in panel rulings. Of this number, the United States has obtained favorable rulings in 15 of the proceedings (i.e., 45 percent).

To understand these numbers they have to be seen in context. On average in the GATT, when a proceeding goes all the way to a panel ruling the complainant obtains a favorable ruling 77 percent of the time, and the defendant obtains a favorable panel ruling 23 percent of the time. This means that the United States wins more than average, and loses less.

Overall Approach

Many dispute settlement proceedings in the GATT are not carried through to the stage of an adopted panel report, but still result in a favorable outcome for one of the parties. Sometimes a negotiated settlement is reached in consultations or during the panel process. Sometimes in consultations a party finds that its complaint was mistaken or legally unfounded, or is otherwise persuaded to abandon its complaint. The United States has been the complainant in some 76 dispute settlement proceedings which have resulted in panel findings, settlements or withdrawn or abandoned complaints. Of the 76 disputes, the U.S. obtained favorable outcomes in 61 of the 76 (i.e. 80 percent). The U.S. has been the defendant in 69 proceedings and in 36 of the 69 (i.e. 52 percent) the U.S. obtained a favorable result (i.e., a panel finding of no violation, or a withdrawn or abandoned complaint).

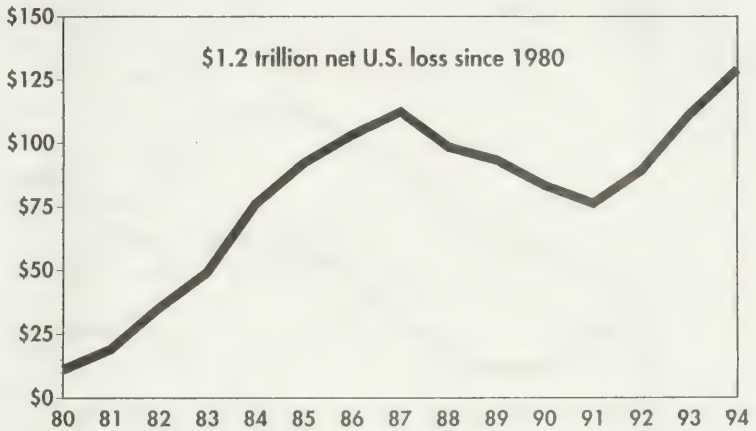
On this basis too we perform better than the average. In the GATT generally, a party that requests consultations obtains a favorable outcome in 64 percent of cases, and the respondent obtains a favorable result in 36 percent of cases.

Question. We have had the opportunity to review differences in the procedure rules of the WTO versus the GATT—are there other substantive changes in the makeup of this body that we should be aware of?

Answer. There are no major substantive differences in the composition of the governing bodies under the two agreements. Under the GATT, the GATT Council conducts the general business of the GATT and oversees dispute settlement proceedings. The GATT Council is drawn from representatives of all GATT Contracting Parties. Although WTO Agreement assigns dispute settlement matters to the Dispute Settlement Body and other issues to the WTO General Council, each body will be composed of representatives from each WTO member country.

U. S. TRADE LOSSES WITH APEC* WILL SET NEW RECORD IN 1994

(Billions)



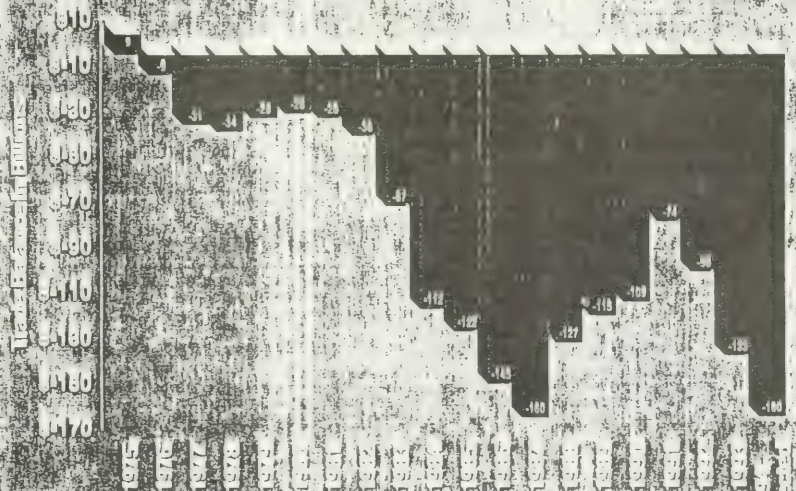
Senator Byron Dorgan

Source: U.S. Department of Commerce, Merchandise Trade

*APEC is the new Asian Pacific Economic Cooperation forum.

TRADE LOSSES (Deficit)

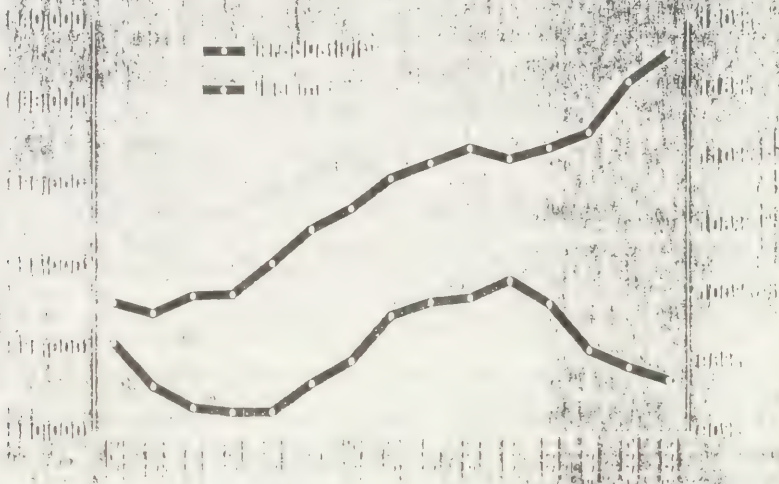
19 Years of Merchandise Trade Deficits



U.S. Senator Byron Dorgan

Source: U.S. Dept. of Commerce

U.S. Workers' Productivity Grows as Pay Erodes



Average Per Hour Manufacturing Wages in U.S. Dollars



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